

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
ABKCO MUSIC, INC., et al., : Docket #15cv4025
Plaintiffs, :
- against - :
SAGAN, et al., : New York, New York
May 2, 2017
Defendants. :
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PROCEEDINGS BEFORE
THE HONORABLE HENRY PITMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: ABKCO Music against Sagan, et al.
Counsel, please state your name for the record.

MR. TAL DICKSTEIN: Tal Dickstein, with my
colleagues Barry Slotnick and Christian Carbone of Loeb &
Loeb for all plaintiffs.

THE COURT: Good morning.

MR. BARRY SLOTNICK: Good morning.

MR. CHRISTIAN CARBONE: Good morning.

MS. ERIN RANAHAN: Good morning, Your Honor, Erin
Ranahan for all defendants.

THE COURT: All right, good morning. This matter
is here as a result of several letters I've gotten
concerning discovery disputes. Let me just go through the
correspondence to make sure I have everything.

I have a letter from plaintiff - these are in
chronological order. Plaintiff's letter of March 22.
Defendant's letter of March 29. Plaintiff's letter of April
7. Defendant's letter of April 17. Defendant's letter of
April 28. And there was a letter from plaintiff dated May
1. Is that the universe of relevant correspondence? I can
do through those again if you want me to.

MR. DICKSTEIN: Your Honor, I think the only
issue, instead of an April 17 letter, I have an April 14
letter.

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THE COURT: Hold on.

MR. DICKSTEIN: That's from defendants.

THE COURT: One second.

(pause in proceeding)

MR. DICKSTEIN: You're correct, it's defendant's April 14. You're correct. My notes have the wrong date on it, you're correct.

THE COURT: Okay. All right, I would like to try to address the issues in the order in which they're raised in the correspondence. The first issue raised by plaintiffs in the March 22 letter is whether or not the production concerning the additional concert recordings is complete, and there are a number, I think there are seven categories, there's even categories that plaintiffs claim are missing. There are representations from defendants that they've produced, that they have now produced everything concerning those additional recordings. Is there still - let me turn to plaintiffs first and ask them if there's still an issue with respect to the production concerning the additional concert recordings.

MR. DICKSTEIN: Sure, Your Honor, I think we've made a lot of progress in that regard. Defendants have updated a number of spreadsheets that relate to their exploitation of these additional recordings: dates of

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2 download, dates of streaming, etc. And we've also learned
3 that these additional recordings implicate five additional
4 acquisitions of physical concert recordings. As Your Honor
5 may recall, the defendants' business is to purchase concert
6 recordings from various venues and other providers, and as a
7 result of the additional recordings that we've recently
8 discovered, there are five additional acquisitions,
9 collections of acquisitions, and defendants have produced
10 the agreements for those acquisitions. What we don't have
11 are any communications related to those.

12 And we've had discussions, Miss Ranahan and I have
13 had a phone call about this issue. I believe the
14 representation was that they searched their own files and
15 outside counsel's files, but, frankly, we haven't seen any
16 communication especially as to two acquisitions that were
17 just disclosed a couple of weeks ago, April 16. We don't
18 have any communications about that acquisition. All we have
19 is the final agreement.

20 So I'd just like to confirm, you know, have their
21 files been checked, have outside counsel's files been
22 checked for communications? Obviously, we're not looking
23 for privileged materials.

24 THE COURT: Right. All right, so you're just
25 looking for confirmation that they've checked for

1
2 communications regarding these acquisitions and that no non-
3 privileged communications exist?

4 MR. DICKSTEIN: Correct, Your Honor.

5 MS. RANAHAN: Yes, Your Honor, and I've explained
6 this to Mr. Dickstein. So we have - a lot of these
7 acquisitions are very old. They go back many years. And to
8 the extent we still have communications that are not
9 privileged, we have searched for them. So we have now
10 updated the spreadsheet several times since Your Honor's
11 February order. So in addition to adding in all the
12 additional recordings that plaintiffs have identified, we've
13 identified hundreds of more that contain the recordings and
14 updated the spreadsheets to reflect that. We've produced
15 every agreement that's implicated and every other document
16 under those categories that has not already been produced in
17 the prior productions.

18 THE COURT: All right, and you've checked all
19 reasonable repositories for communications, and there are no
20 communications regarding the acquisitions, is that right?

21 MS. RANAHAN: Yes, Your Honor.

22 THE COURT: All right, does that take care of it?

23 MR. DICKSTEIN: Would that include outside
24 counsel? I would just ask the defendants.

25 MS. RANAHAN: The outside counsel that are still

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2 within our control or that we still talk to or have some
3 kind of relationship with, yes.

4 THE COURT: Well, even if you don't have a
5 relationship with them, if - I mean let's assume when your
6 client used XYZ law firm and subsequently broke with XYZ law
7 firm for whatever reason, I mean why would you not be
8 obligated to contact XYZ law firm?

9 MS. RANAHAN: We have contacted them, Your Honor.
10 To the extent we have contacted and not received a response
11 back from one, we haven't received a response, and we can't
12 get a hold of him. We don't even know where he is. So this
13 was from a decade ago --

14 THE COURT: I see.

15 MS. RANAHAN: -- but we have made efforts in good
16 faith to try to reach out to these and find appropriate
17 communications. But there's one counsel who, this is the
18 third litigation this has come up, we have been unable to
19 track this one particular prior counsel.

20 THE COURT: Can we identify who that counsel is?

21 MS. RANAHAN: I can't remember off the top of my
22 head. I can let Mr. Dickstein know later if he'd like to
23 know that. I just don't want to misrepresent it on the
24 record.

25 THE COURT: All right. Mr. Dickstein, does that

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2 - if she identifies who this one non-communicative counsel
3 is, does that take care of this matter, this aspect of the
4 discovery issues?

5 MR. DICKSTEIN: I think it would, Your Honor.
6 We'll follow up if we have to with that counsel directly. I
7 would just note for the record I think there is one
8 spreadsheet that we've, in the past several days, asked
9 defendants to update. They've indicated they will. So it's
10 not something Your Honor has to deal with. But aside from
11 that I believe that issue we'll deal with between counsel.

12 THE COURT: All right. I think then the next
13 issue is the second issue raised in defendants' March 29
14 letter regarding the redactions.

15 I mean we've talked about this in the past.
16 There's a split of authority on whether redactions on the
17 records of relevance are appropriate, and for the life of me
18 I don't see why redactions on the grounds of irrelevance are
19 inappropriate. You know, I don't think, you know, you
20 wouldn't - I party is not under an obligation to produce
21 irrelevant documents. I'm not sure why the parties should
22 be under an obligation to produce irrelevant parts of
23 documents. If the issue was whether a particular party was
24 in Boston on a particular date, the party would probably be
25 obligated to produce the American, his American Express or

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2 credit card statement showing that he was in Boston on that
3 date, that he was in a hotel in Boston on that date, but I'm
4 not sure that there'd be any reason to have him produce
5 purchases he made before or after that date, you know,
6 wherever they were.

7 MS. RANAHAN: If I could, Your Honor.

8 THE COURT: Go ahead.

9 MS. RANAHAN: So it's not - we don't know the
10 basis of the redactions because --

11 THE COURT: You don't know the basis of the
12 documents withheld on - you know don't the nature of the
13 documents withheld on the grounds of irrelevance.

14 MS. RANAHAN: Well, Your Honor, for the ABKO one,
15 we knew the pages were redacted because they were stamped
16 that way. In this case - and plaintiffs have actually since
17 agreed to update their redaction log to reflect. All we're
18 asking for, we're not asking for Your Honor to make the
19 determination that they should be produced unredacted. All
20 we're asking for is what plaintiffs have, I believe, agreed
21 to do, which is give us, so that we know when things are
22 redacted so we can look at it, make an assessment whether
23 there's anything further to do. And that's really the stage
24 we're at. We're not asking for Your Honor to look at
25 anything in camera and produce it.

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2 THE COURT: I think that's a fair point. One of
3 the issues that defendants raised in their letter is that
4 with respect to some documents they couldn't tell - if I
5 understand their issue correctly, that they couldn't tell
6 whether the document was redacted or not. And that I think
7 is a fair objection. I mean is there - have the plaintiffs
8 indicated - usually when documents are produced and
9 redacted, there's a stamp on it that says redacted. What's
10 the status of at least identifying the documents that have
11 been redacted from plaintiffs' side?

12 MR. DICKSTEIN: Right, I fully understand that
13 point, Your Honor, and we've discussions about this, and
14 what we've told defendants that we're gonna do and that
15 we're doing is we're gonna re-collect the documents from our
16 client. If there's revenue information, royalty percentages
17 that are confidential, not relevant, and shouldn't be
18 produced, those will be clearly redacted.

19 THE COURT: All right, so you'll identify the
20 documents that are redacted?

21 MR. DICKSTEIN: By indicating redaction in the
22 document, I think it'll be clear to defendants' counsel what
23 has been redacted, unless there's some other type of
24 identification they're looking for.

25 THE COURT: I just want to make sure I'm

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understanding. Let's assume there's a letter and there's a paragraph redacted or an email or some other document there's a paragraph redacted, a non-spreadsheet document, is there gonna be - how is the defendant gonna know that that document's been redacted?

MR. DICKSTEIN: There'll be a big black box that says redacted.

THE COURT: Okay.

MR. DICKSTEIN: We can also put together a list for defendants if they like.

THE COURT: So are you gonna reproduce all the redacted documents and mark them redacted, is that what you're suggesting?

MR. DICKSTEIN: So, Your Honor, I think what we're actually talking about is a limited universe of documents where Miss Ranahan is correct. There were a few paragraphs or sections that were whited out because they were not relevant. Either they didn't relate to the songs at issue, they were not related to chain of title. All these documents do relate to our client's chain of title, the various transfers and to copyrights.

So wherever those paragraphs were omitted, we will produce them in, we'll produce new versions of these documents with that material. If there are financial

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2 information in there or royalty percentages that we believe
3 should be redacted, we're gonna mark those clearly with the
4 redacted box.

5 THE COURT: Okay. When is that gonna be
6 completed by?

7 MR. DICKSTEIN: So I just spoke with the client.
8 We anticipate two weeks' time we'll be able to produce that.

9 MS. RANAHAN: And, Your Honor, just to clarify,
10 so far it's not been limited to just financials. There's,
11 for instance, definitions from agreements that are missing
12 that we would want to be able to read to understand relevant
13 clauses in the agreement. And so I understand what
14 plaintiffs are gonna do is take another look to make sure -
15 what happened was during the deposition the witness said she
16 had taken the initiative to decide what to redact, and what
17 I believe plaintiffs have agreed to do is go back, take a
18 fresh look to see if there's anything less that they should
19 redact on this next round, including things like definitions
20 that allow us to put the agreement in context, that don't
21 fall into the revenue or irrelevance category.

22 But to the extent it's something beyond that, if
23 it's privileged, we would just request that it be on a
24 privilege log so we can just assess the basis for the nature
25 of it. If it's, you know, what Your Honor believes it to be

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2 fair game, which is that they're redacting out revenue
3 information that's not relevant, then we understand that
4 because plaintiffs say they'll, if there's a dollar sign,
5 they'll redact things besides the dollar so that you can
6 tell that it was financial information. But there are other
7 items we noticed during the depositions, like definitions.

8 THE COURT: All right. Well, to the extent that
9 the defendants are seeking a log of the redactions, I don't
10 think that that's called for by the Federal Rules, so I'm
11 going to deny that.

12 One of the other lurking issues here is the
13 settlement agreement between the Rolling Stones and ABKO,
14 and I've looked at those again, and I think the redactions
15 are appropriate. So I'm not gonna order further production
16 of the settlement agreements. All right.

17 The next issue that's raised in the
18 correspondence, this, again, is the defendants' March 29
19 letter, is a contention that Levy was not appropriately
20 prepared. One of the problems I had in trying to review the
21 material concerning Mr. Levy was that he didn't have the
22 30(b)(6) notice. You know, the gauge by which a 30(b)(6)
23 witness has to be prepared is the topics that are reasonably
24 identified in the notice. I looked through the material
25 again yesterday; I didn't see the notice to Spirit. If I've

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overlooked it, I'm happy to have you call it to my attention.

MS. RANAHAN: Your Honor, let's see.

THE COURT: There was a 30(b)(6) to some other entities, but I don't think --

(interposing)

MS. RANAHAN: Right --

THE COURT: -- to Spirit.

MS. RANAHAN: -- they're identical. They are identical. So to the extent - and I don't know if plaintiffs --

THE COURT: No, I don't think that was stated anywhere that they were identical.

MS. RANAHAN: Okay, well, they are identical. I mean the issue is Mr. Levy, and it did not, it was not the same for the Warner I will say. The Warner representative, he knew the spreadsheets, he knew what went into them, he knew - we went through them, he could explain them. The situation with Mr. Levy was he testified that he had no idea how they were created, what went into making them --

THE COURT: They tell me they were spreadsheets prepared by Harry Fox, as I recall.

MS. RANAHAN: No, these were spreadsheets prepared by plaintiffs and produced by plaintiffs --

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THE COURT: Prepared by Spirit?

MS. RANAHAN: Several of them, yes. They were prepared by Spirit, and he didn't - the person who had created them was no longer with the company, so he had left. And he hadn't reached out or tried to figure out what had gone into these spreadsheets. And I actually did have a conversation with Mr. Carbone who was at the deposition that day who recognized, as soon as he was finished with his deposition, he says you are entitled to someone who can explain what these are. And so I understood we were gonna be working something out. Mr. Dickstein said something similar to me. But then their position in the letter briefs is very different from that.

It's not the same for Warner. So this is not an issue that we're just taking up every time we have a witness --

THE COURT: No, I understand. You told me in your letters, one of the letters that the other witnesses, other 30(b)(6)s did better than Mr. Levy.

MS. RANAHAN: That's correct, Your Honor. On these spreadsheets, nothing personal, it's just that he didn't have the familiarity with them. He admitted he didn't have the familiarity. The person that did had left, and he had made no effort to get up to speed on what they

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2 were or how they were created.

3 THE COURT: All right.

4 MR. CARBONE: Judge, Chris Carbone. I
5 represented Mr. Levy at his deposition. I think the one
6 thing that I think we've learned, and I don't know if this
7 covers your time in private practice, there's Excel
8 spreadsheets and depositions pose a difficulty always. And
9 what happened, and I sympathize with Miss Ranahan on this,
10 is that she printed out copies that were vastly different
11 because they weren't native, and she knew this was an issue
12 because she brought a projector because in a lot of these
13 depositions, we've actually done this. We projected the
14 spreadsheets on the screen so people can understand. The
15 copy she printed out, putting aside the Harry Fox one, which
16 the witness didn't, the client didn't create, were --

17 THE COURT: I thought there was one colloquy
18 though where there was a discussion about the format in
19 which they were presented to the witness --

20 MR. CARBONE: Precisely --

21 THE COURT: -- the witness said it wouldn't make
22 a difference, or somebody said it wouldn't make a
23 difference. I --

24 MR. CARBONE: That's not my recollection, Judge.

25 THE COURT: Well, you go ahead.

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2 MR. CARBONE: Miss Ranahan had the technology
3 available, and to show it in the native format. Now, look,
4 an A+ level witness would've seen the difference, but I can
5 tell you that when we looked at the spreadsheet that she
6 printed out, they were confusing. And I did talk to her
7 about that on a break. I suggested that she find another
8 way to do it, and she declined to do so. These are - at the
9 end of the day, Judge, these are charges that contain pretty
10 straightforward information about, you know, the songs, the
11 amount of money. Mr. Levy doesn't have a specific
12 understanding of every single item in there, but he was
13 familiar enough that day to talk about the charge that they
14 were showing in a proper format.

15 THE COURT: Uh huh. Let me ask you this
16 question, Miss Ranahan, what substantive information were
17 you seeking from Mr. Levy that you didn't get?

18 MS. RANAHAN: So we wanted to understand, because
19 Your Honor will remember we originally attempted to compel
20 the license agreements themselves, the underlying synch
21 licenses, the underlying licenses that lend themselves to
22 the internet agreements, amounts that they were able to earn
23 over the relevant time period. And what plaintiffs
24 represented was that they put all this spreadsheets so there
25 was no need for us to actually view the underlying

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2 agreements. They were totaled up. We may not get to see
3 each individual transaction, but that they were certainly
4 well represented in those spreadsheets and that once we were
5 able to question our 30(b)(6) witnesses, we would have a
6 full understanding of how those were created, and that
7 should suffice.

8 I will say that that's --

9 THE COURT: Can you give me an example of one of
10 these spreadsheets? I'm trying to - I'm trying to - there
11 are a couple of things I'm trying to think of. One is a
12 potential remedy here. I'm trying to understand what
13 information you wanted from Levy that you didn't get.

14 MS. RANAHAN: Right, so and that's --

15 THE COURT: And specifics. In terms of specifics
16 here.

17 MS. RANAHAN: Right, so the specifics are what
18 went into the totals, how they calculated and what
19 agreements went into the synch and what went into the
20 internet totals that they - those are the issues relevant
21 here are the royalties that come in from internet and synch.

22 THE COURT: So the spreadsheet would have a song
23 and then it would have --

24 MS. RANAHAN: Totals.

25 THE COURT: The total royalties received from the

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2 various licenses.

3 MS. RANAHAN: Yes, Your Honor. And so --

4 THE COURT: And what - what would be the question
5 that you wanted to ask that you weren't able to ask.

6 MS. RANAHAN: So what went into creating this,
7 how, you know, what licenses did you look at, what documents
8 did you use to make this. And regardless of format I showed
9 the witness, he was very clear that he had nothing to do
10 with making the spreadsheets. He had no idea how any of the
11 spreadsheets were made or what went into them. And, again,
12 after the deposition, Mr. Carbone said we should get more.

13 So there is - the problem is what the remedy is,
14 what we can do to try to resolve this given that they don't
15 have a witness at Spirit anymore that knows how they were
16 created. I know one of the suggestions was to track down
17 Ryan, the person who created the spreadsheets and worked on
18 the spreadsheets, who's now I believe at another company,
19 maybe (indiscernible) or something.

20 THE COURT: What do plaintiffs say?

21 MR. CARBONE: So I want to address the one, the
22 misunderstanding Miss Ranahan has about me acknowledging
23 purportedly that she was entitled to another deposition.
24 That's obviously inconsistent with the position we take, and
25 I think she must've just misunderstood our discussion.

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2 The issue - Mr. Levy, of course, as a 30(b)(6) did
3 not, is not obligated to know about things that no one knew
4 about. We had these spreadsheets, they were business
5 records --

6 THE COURT: Well.

7 MR. CARBONE: He could talk about them. He could
8 talk about the revenue if he was asked the proper questions.
9 He just wasn't asked the questions. I don't think it's an
10 issue, Judge, in terms of authenticating these documents or
11 knowing that there's not gonna be a problem with Miss
12 Ranahan there, but she has everything she needs.

13 MS. RANAHAN: And just to clarify, I didn't
14 suggest that Mr. Carbone said he would put Ryan up for a
15 deposition. That's not what I meant. What he said was that
16 we had to get more information to understand how these were
17 created, that the witness wasn't able to do that. I know
18 how to go through the native ones because I did it for the
19 other witnesses, but this witness was very clear that he had
20 nothing to do with it. So it seemed to be a futile exercise
21 that the witness agreed it would be. So I don't - the idea
22 - I don't know what the suggestion is that we had our chance
23 to ask the witness who doesn't know how they were made and
24 that's it or we call him back in and show him spreadsheets
25 he never created. I mean those don't seem like worthy

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2 endeavors.

3 So what we wanted was either --

4 THE COURT: Can you give me an example from Mr.
5 Levy's deposition of some of the questions he was unable to
6 answer here?

7 MS. RANAHAN: Well, he, across the board, Your
8 Honor, did not know how the spreadsheets were created or
9 what went into them, and that's the main gist. And there's
10 no question about that. Like he, so matter what question I
11 asked about the spreadsheet, he disclaimed any knowledge
12 about how they were created, and plaintiffs I don't think
13 would dispute that.

14 MR. CARBONE: Well --

15 THE COURT: Hold on a second. I mean from - is
16 it evident from the spreadsheets what went into them?

17 MS. RANAHAN: No. Some of them are very, I can't
18 even, I don't know what the columns are.

19 MR. CARBONE: Judge, may I?

20 THE COURT: Yeah.

21 MR. CARBONE: Two things. One is that certainly
22 the 30(b)(6), and it's not an issue on that, she had asked,
23 the defendants had asked for information about licensing.
24 Mr. Levy was prepared to talk about that. There was
25 certainly no 30(b)(6) topic on the origination of every

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2 spreadsheet that was created. That wasn't a topic. But the
3 other - that's the main point.

4 But the specific question in terms of what
5 questions he couldn't answer, he wasn't, as Miss Ranahan
6 (indiscernible), she asked him how was the spreadsheet
7 created. I agree, he didn't know, he didn't have a clear
8 understanding of that. But he certainly understood the
9 information on it, but he wasn't given the opportunity to
10 look at them in their native format.

11 MR. DICKSTEIN: And, Judge, I would just add that
12 if you do look at these spreadsheets in native format, I
13 think it is fairly clear what the topics are. In fact, you
14 may know Excel has multiple tabs.

15 THE COURT: Uh huh.

16 MR. DICKSTEIN: So on the licensing spreadsheet
17 there was a tab that said synch, the synchronization
18 license. Another one said macro mechanical. So I think had
19 Mr. Levy been shown that Excel in native format or had Miss
20 Ranahan or probably anyone in her firm looked at it in
21 native format, it would be readily apparent what information
22 is in there.

23 The one possible exception is the spreadsheet that
24 originated with Harry Fox, and I do recall Mr. Levy did
25 testify that his former colleague Ryan had created that. I

1
2 think that was just a mistake. I think that's because Ryan
3 had requested that spreadsheet from Harry Fox and then
4 provided it to Mr. Levy. That's why Mr. Levy thought Ryan,
5 who's last name, Ryan I believe had created it, but, in
6 fact, it's a Harry Fox spreadsheet. There have been other
7 spreadsheets just like that have been produced to
8 defendants. We've told them that format of spreadsheet
9 comes from Harry Fox. So I'm not sure there's anything else
10 for Spirit to provide there.

11 THE COURT: Well, Miss Ranahan, are you looking
12 for where the numbers on the spreadsheets came from --

13 MS. RANAHAN: Yes.

14 THE COURT: -- and who did the compilation?

15 MS. RANAHAN: Yes.

16 THE COURT: And about how many questions
17 concerning the spreadsheets do you have? I mean I presume
18 the method of compilation is gonna be the same for all the
19 musical compositions.

20 MS. RANAHAN: I don't know, Your Honor. We don't
21 know how they were created. So my concern is if we - I
22 don't know how without Ryan assisting them or whoever was
23 involved in creating them, I don't know how we'd get the
24 information without either looking at the agreements or
25 having - I don't know what the solution is. I just know

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2 that we want the agreements. I know that Your Honor's
3 reluctant to give us the underlying --

4 THE COURT: Yeah, well, I think now you're
5 seeking reconsideration which is --

6 MS. RANAHAN: Right --

7 THE COURT: I'm not sure, you know, there's sort
8 of a disconnect though between the contention that Levy was
9 an improperly prepared 30(b)(6) witness and your getting the
10 licenses. I think there's --

11 MS. RANAHAN: Well, if there's --

12 THE COURT: -- there's a lack of connection
13 there. I mean if Levy was improperly prepared, it would
14 seem to me the remedy is either you get another 30(b)(6) or
15 maybe you get interrogatories. But I don't see how that
16 changes the ruling with respect to the licensing agreements.

17 MS. RANAHAN: Okay, so the concern we have is
18 just who do they have that could respond to interrogatories
19 if the person that created them is no longer associated with
20 the company and who would be a better 30(b)(6) witness when
21 the one person that they put up wasn't able to speak to it.
22 So I don't know, perhaps he has a conversation with Ryan and
23 then comes back. If there's a more creative solution, Your
24 Honor, it's just that we are now left with a spreadsheet
25 that no one can explain how it was made, and we're supposed

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2 to take that as the evidence. And it applies to all the
3 spreadsheets that were - all the Excel sheets that were
4 supposed to reflect the revenues and the licensing. That
5 was the basis for Your Honor deciding we had enough and not
6 get the licenses.

7 So it is to that extent we believe it's connected
8 because it was supposed to be a compilation of those
9 licenses. We just can't --

10 (interposing)

11 THE COURT: Yeah, but I mean the licenses aren't
12 gonna give you what was actually received.

13 MS. RANAHAN: Right, but - so we could do our own
14 analysis because nobody at Spirit apparently has been able
15 to do that.

16 THE COURT: What are plaintiffs' thoughts?

17 MR. DICKSTEIN: Your Honor, the spreadsheets are
18 fairly self-explanatory. They do - and the issue here that
19 keeps getting inflated is the record that Miss Ranahan made
20 was not I'm showing you the exhibits that you produced in
21 discovery. It was I produced these printouts that we've
22 done here, again, Excel, it happens, I've dealt with it
23 myself repeatedly. And so she didn't make the record about
24 that. And I know it's a missed opportunity for her, I
25 understand, but all she was going to get was, yes, this is

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2 the number, this is - you know, song X was licensed to party
3 Y on this date for this amount of money. Those are what
4 those things are.

5 THE COURT: No, but I mean I guess her question
6 was how did the number wind up on the spreadsheet? How did
7 that number get there? Did someone --

8 MR. DICKSTEIN: That wasn't a 30(b)(6) topic.

9 MS. RANAHAN: And, of course, Your Honor, if
10 we're asking about revenues and value, of course,
11 understanding the spreadsheets they're holding up to justify
12 not producing the underlying information, of course, that's
13 gonna be part of the 30(b)(6) topic on these issues. Of
14 course it is. I don't even understand what that means.

15 MR. DICKSTEIN: Just by comparison, Your Honor,
16 in one of our 30(b)(6) notices, I believe I did list
17 specific spreadsheets that we wanted the deponent to testify
18 to.

19 THE COURT: Uh huh.

20 (interposing)

21 THE COURT: Just one question.

22 MS. RANAHAN: I'm sorry.

23 THE COURT: The 30(b)(6) notice that you say is
24 identical to the one served on Levy, where is that?

25 MS. RANAHAN: So --

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THE COURT: Just what exhibit is that --

MS. RANAHAN: There was one, Your Honor, that was just from the most recent filing that I found.

THE COURT: The April 28 letter?

MS. RANAHAN: Yeah, so there's one - let me find which exhibit it is. I just saw it.

(pause in proceeding)

THE COURT: Is this exhibit 3?

MS. RANAHAN: Oh, this is the, so this is the responses and objections to the topics. So this has the topics on it.

THE COURT: Hold on a second. Where is - there was a 30(b)(6) that you said was identical to the one served on Levy, and is that exhibit 3 to the April 28 letter?

MS. RANAHAN: Let's see. No, that was an individual one.

THE COURT: No, that's 30(b)(6).

MS. RANAHAN: Oh, let's see. Oh, exhibit 3. Yes.

THE COURT: Exhibit 3 is identical to the one served --

MS. RANAHAN: On all the --

THE COURT: -- on Spirit --

MS. RANAHAN: Yes. Spirit and Warner.

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THE COURT: And what's the topic?

MS. RANAHAN: So topics 8, 9 - the Spirit witness was designated for every topic on here.

THE COURT: Okay, but, no, the topics --

MS. RANAHAN: Right, right, so the topics --

THE COURT: -- that you say that he was improperly prepared on were 8, 9, and 10?

MS. RANAHAN: 8, 9, and 10 - let's see - 11, 12 -
-

(pause in proceeding)

THE COURT: All right, and there was a response on that from, there were objections to that by the plaintiffs?

MR. DICKSTEIN: Yes, Your Honor.

THE COURT: Is that an exhibit to one of these letters?

MR. DICKSTEIN: The 30(b)(6) wasn't put in, so I don't think our objections to it were.

THE COURT: All right.

MR. DICKSTEIN: I can certainly respond to it in a general way, Judge, I mean I'm familiar with the topics.

MS. RANAHAN: There are some other objections, Your Honor, that we - it's to EMI, but I imagine they're similar, if you want to look at it. It's exhibit E to what

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we just submitted, or they just submitted. What you just submitted, exhibit E.

(pause in proceeding)

THE COURT: Miss Ranahan, if the deposition were reconvened, can you give me an example of two or three of the questions you would like to ask?

MS. RANAHAN: Right, so I don't know that - unless Mr. Levy does some diligence and investigation, I don't know that he would be worth doing again. But we would just want to understand how they were, how the spreadsheets were created. Same questions we asked the Warner representative. So they have outline or they know what we're going for. We're just trying to understand what the columns mean --

THE COURT: How the spreadsheets were created, what else?

MS. RANAHAN: What the columns mean, what went into creating them, what they looked at, what type of databases they looked at internally. So just a basic understanding of how these came together and what went into them.

THE COURT: And why could that not be done by way of interrogatory?

MS. RANAHAN: I don't know that it can't be. I

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2 just don't know who they're gonna - I don't want the
3 attorneys to guess. I want there to be a witness --

4 MR. DICKSTEIN: Judge, I - it's under oath.
5 We're gonna do the diligence that needs to be done.

6 THE COURT: Yeah, I mean I'm not - I'm not sure
7 any attorney just answers interrogatories and takes a guess,
8 not if they want to keep their license.

9 MR. DICKSTEIN: At least not in your courtroom,
10 Judge.

11 THE COURT: Well, I'm not, you know, it's a very
12 dangerous thing to do. I mean it seems - like I understand,
13 I think I understand your point, Miss RanaHan. It seems to
14 me - you know, and there's really very little difference
15 between what a 30(b)(6) witness testifies to and an
16 interrogatory answer. They're both answers on behalf of the
17 entity and not the individual witness. And --

18 MS. RANAHAH: I suppose one challenge with the
19 interrogatory, Your Honor, is what they mentioned which was
20 the native, the need to see these spreadsheets in native
21 form, and so attaching them to an interrogatory or a hard
22 copy form may make that more difficult.

23 THE COURT: Well, aren't these spreadsheets,
24 don't they have Bates numbers?

25 MS. RANAHAH: They have one Bates number, but it

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2 applies to thousands of different tabs and pages. And so
3 it's like one designated thing, if you print it out, it'd be
4 10,000 pages. I mean that's an exaggeration, but that's how
5 --

6 MR. DICKSTEIN: I'm confident that --

7 THE COURT: Hold on, let me just get an
8 understanding what these spreadsheets depict. In the left-
9 hand column are there songs?

10 MS. RANAHAN: So there's several different ones,
11 and some of them may have a song and then they'll have --

12 (interposing)

13 THE COURT: And then different kinds of royalties
14 --

15 MS. RANAHAN: -- several columns with acronyms
16 and codes, and some of them look like gibberish to us. Like
17 we have no idea what they mean. I'm sure someone knew and
18 they created them. But - so that's the challenge, Your
19 Honor, is that we just can't tell what they are. We have no
20 witness that has explained it to us. We are not sure which
21 witness they have to do that given the state of Ryan having
22 created them and left, which is I understand happens. It's
23 nobody's fault.

24 THE COURT: No, but could you not ask in
25 interrogatory asking what is the source of the numbers in

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the column labeled XYZ on spreadsheet, you know, whatever the Bates number of the spreadsheet is?

MS. RANAHAN: I mean we could. It's just that it could get very, very tedious. There's a lot of columns, and there's a lot of different songs at issue. So each time you're asking, yeah, I mean --

THE COURT: I mean I presume, you know, I presume, you know, let's assume that a plaintiff has 400 songs, I presume the method by which they compile the mechanical royalties is gonna be the same for all 400.

MS. RANAHAN: We would assume so, Your Honor --

THE COURT: So I'm not sure it's --

MS. RANAHAN: -- but we just haven't been able to figure it out --

THE COURT: I'm not sure you need a specific answer as to each box on the spreadsheet. I would think that, you know, it would be unreasonable for I think a publisher to use different methods for different songs. It's possible, but it seems unreasonable.

MR. DICKSTEIN: Judge, if I may, the issue with the mechanical royalties, for example, those are reports generated by the Harry Fox Agency and received by Spirit and others. Those aren't reports that are generated. That was one of the issues that Miss Ranahan --

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2 THE COURT: Right, so that would be the answer.

3 MR. DICKSTEIN: It's the report we received.

4 THE COURT: Yeah. You know, and beyond that you
5 don't know what goes into it beyond, you know, prior to
6 that. I mean how many interrogatories would you need to
7 probe these areas, Miss Ranahan?

8 MS. RANAHAN: I don't know, Your Honor, because I
9 haven't thought of it in the context of interrogatories.

10 THE COURT: I mean it's a question. An
11 interrogatory's a question. Whether you ask it at a
12 deposition or ask it in the form of interrogatory, it's --

13 MS. RANAHAN: Yeah, I mean I suppose --

14 THE COURT: -- you know, it's --

15 MS. RANAHAN: Well, so, you know, under the
16 Federal Rules they're not supposed to be compound. I
17 suppose if we were given some leeway in making them
18 compounds, in other words, if we ask, you know, explain each
19 of the columns on this spreadsheet and they could do that in
20 one interrogatory instead of objecting, that's now 27
21 interrogatories and we've exceeded our limit. So I haven't
22 thought of it in this light. I wasn't sure what the
23 solution that Your Honor would be comfortable with. But I
24 would be reluctant to agree to agree to a hard 25 stop given
25 how complex these spreadsheets are.

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MR. DICKSTEIN: Your Honor, we're certainly prepared to commit to not hold Miss Ranahan to that, to the extent that she's asking questions that are identifying and explaining what these documents are and how they were compiled. It's a reasonable solution.

THE COURT: Well, let me ask you this. I think she's entitled to probe this a little bit more, either by way of interrogatory or by way of deposition. Do you have any thoughts on which is preferable?

MR. DICKSTEIN: I think we could start with the interrogatory, Judge. I'd just point - they're entitled to probe it more. She didn't really probe it at all was the issue. She - the examination was not - she had the ability at that time while Mr. Levy was there to show him these documents in the way they were produced and didn't do that. So I understand she didn't get the information she wants, but I think that she has a fair amount of culpability for that.

THE COURT: Well, no, but it sounds like other witnesses were able to answer the question.

MR. DICKSTEIN: Spirit is a small independent publisher, Judge, so they don't have the sophis - I mean there was no one in there who'd even been deposed before. So it was a --

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THE COURT: Well, yeah, but I mean -

MR. DICKSTEIN: And it didn't --

THE COURT: -- the Federal Rules is the same
whether it's General Motors or Ma's Chile.

MR. DICKSTEIN: Understood. Understood.

MS. RANAHAN: And Mr. Levy was an attorney, Your
Honor, so he was not, you know, an unsophisticated witness.

THE COURT: All right.

MR. DICKSTEIN: Not a litigator, if you presume
litigators are sophisticated, I don't know.

THE COURT: Well, don't law schools still teach
the Federal Rules of Civil Procedure or is that passé now?
It's a brave new world. All right. How many spreadsheets
are at issue? How many do you want?

MS. RANAHAN: A handful --

THE COURT: How many is a hand?

MS. RANAHAN: I mean basically his testimony was
he was involved in creating none of them. So that's - he
was involved in creating none.

THE COURT: How many spreadsheets are we talking
about?

MS. RANAHAN: I believe there was four or five.

MR. DICKSTEIN: That's my rough understanding
too.

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MS. RANAHAN: And, Your Honor, if we are gonna do the interrogatories, I mean there were other topics, that we put them in a big footnote that are not squarely at issue. So I don't know if they could just be limited to topics he was unprepared for.

THE COURT: What other areas did you want to ask him about?

MS. RANAHAN: And he wasn't sure - one of the issues was communications with artists and other plaintiffs. He didn't know anything about that.

MR. DICKSTEIN: That's- that was not accurate. I think in the record it reflected that he was aware that, I think it was Mr. Townsend was informed that his deposition may be sought, and that was all he was aware of.

THE COURT: I'm not sure how that's --

MS. RANAHAN: Well, that's not the --

THE COURT: I'm not sure how that's irrelevant in any event.

MS. RANAHAN: Well, right, we're trying to - we - so what - the big issue in this case is that we were paying them the whole, our clients have been paying under licenses --

THE COURT: No, but hold on a second. I'm looking at footnote 1 at page 5 of your March 29 letter,

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2 Spirit's communications with artists and other plaintiffs,
3 and you quote, "Mr. Levy, I am unaware of any communications
4 dealing with this suit generally. What I am thinking of is
5 that someone in our office informed Pete Townsend that he
6 might be called to be deposed" - I mean --

7 MS. RANAHAN: Right, so that's not --

8 THE COURT: -- what does that have to do with
9 anything?

10 MS. RANAHAN: When he was informed he was deposed
11 was not something we were looking at. What we're trying to
12 --

13 THE COURT: I'm trying to get a handle - let's
14 just try to stick with this issue here. You said there were
15 other issues besides the spreadsheets that Mr. Levy was not
16 properly prepared on. What are those other issues?

17 MS. RANAHAN: Right, so when I say
18 communications, one of the big issues for us is the payments
19 that we've been making. It's not a direct payment though.
20 We pay it to a third party who then pays it to plaintiffs
21 who then pay it to the artists. So it's for us to
22 understand if there's been communications about payments
23 from our clients. That's the communications that we're
24 interested in, not, you know --

25 THE COURT: Communications between Spirit and

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whom?

MS. RANAHAN: And the artists about payments from us.

THE COURT: Well --

MS. RANAHAN: Or payments of us through the third-party intermediary.

THE COURT: And what difference does it make whether Spirit communicated with the artist or not? I mean if you pay, if your client paid royalties to the third party --

MS. RANAHAN: We're trying to trace it.

THE COURT: -- what difference does it make, what difference does it make whether Spirit spoke with the artists or not?

MS. RANAHAN: Well, so we're trying to understand, we paid them to a third party. We want to know, we're trying to figure out if they all made it to the right place. So that impacts our licenses.

THE COURT: Well, if they made it to the publishing company, isn't that the right place?

MS. RANAHAN: We didn't think so, but then the artists are supposed to be getting certain cuts of it too.

THE COURT: No, but if - with respect to your client's potential liability, I'm not sure if it makes a

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difference whether it went beyond the third party or not. I mean if the third - if your client was paying licensing fees, is your client's - and let's assume the third party pocketed it either through negligence or through malfeasance or the third party for whatever reason didn't forward it to the publishing company, does that affect your client's liability?

MS. RANAHAN: We would hope not, Your Honor. We would hope not. But it also affects their knowledge when they brought this lawsuit --

THE COURT: Whose knowledge?

MS. RANAHAN: Plaintiffs, in what they knew, you know, that they had been accepting these payments, whether they have to do an offset if there's any ultimate liability determined or - and I think what they've actually --

THE COURT: Well, the communications with the client though really seems kinda far --

MS. RANAHAN: Okay.

THE COURT: The conversations with the artists seem pretty far afield.

MS. RANAHAN: Okay, Your Honor.

THE COURT: What else did you want to ask Levy about that he didn't know?

MS. RANAHAN: The damages that they're seeking.

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2 I mean he was under the impression they were seeking actual
3 damages which --

4 MR. DICKSTEIN: They're not.

5 THE COURT: All right. What else?

6 MS. RANAHAN: Let's see. The value of the
7 compositions, I mean any assessment of what the value would
8 be. He said he would have to get an expert, and we had
9 expert designations and there were no experts that were
10 identified. So --

11 MR. DICKSTEIN: Judge - I'm sorry. Judge, so the
12 Spirit catalogue at issue relates mostly to Pete Townsend,
13 Who songs. There's an acquisition agreement in the file
14 unredacted with a pretty massive purchase price. There's
15 certainly - beyond that I don't think Mr. Levy or anyone
16 else at Spirit would be able to talk about the value of what
17 they paid for them, which was a lot, a few years back.

18 THE COURT: Uh huh.

19 MS. RANAHAN: And then the last issue, Your
20 Honor, just relates to what we were just touching on which
21 is just the amount that Spirit has collected from our
22 clients. We don't know, and that is consistent across all
23 of the 30(b)(6) witnesses so far, and there's an issue with
24 (indiscernible) I'm sure we'll get to.

25 THE COURT: Well, let's - well, doesn't your

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2 client know what's paid?

3 MS. RANAHAN: We know what we've paid to the
4 third party, Your Honor, and then we know what reports we
5 were able to get from t third party. But we also would like
6 to know what plaintiffs actually received. For all we can
7 tell, they were still collecting all the monies we were
8 paying well after this lawsuit was filed for all the
9 amounts, but we want to know if their records are consistent
10 with that, if there's some kind of, you know, other holdup
11 between us and - if there were direct payments, Your Honor,
12 I would agree that if we were paying, writing checks to
13 plaintiffs, there wouldn't be this issue, but we paid them
14 to a third party who then distributes them to plaintiffs.
15 And plaintiffs so far have disclaimed knowledge about how
16 much actually came from our clients. And they've given us
17 these spreadsheets like, Your Honor, we are discussing that
18 shows the total revenues, but they're not always, with few
19 exceptions, they're not broken down to show that they come
20 from our clients.

21 THE COURT: Well, my understanding is that there
22 are third parties that act as collection agencies and that
23 get royalties from multiple sources --

24 MS. RANAHAN: That's right.

25 THE COURT: -- and then the third party forwards

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2 the check to the publishing company. And it doesn't say we
3 got --

4 MS. RANAHAN: Well, they give reports --

5 THE COURT: -- \$50 from X, \$70 from Y, \$100 from
6 Z.

7 MS. RANAHAN: From what we can tell, they do.
8 They give reports that break down who the payment come from,
9 and then we want those from what plaintiffs have gotten.

10 MR. DICKSTEIN: Judge, if I may respond to that.

11 THE COURT: Yeah.

12 MR. DICKSTEIN: I think the third party that Miss
13 Ranahan is discussing is a company called Media Net, and
14 that's not a typical copyright clearinghouse independent
15 party that Your Honor might be thinking of. This is
16 essentially a servicing organization which the defendants
17 have a service agreement with. So they're essentially
18 defendants' agent. And, in fact, they produced a number of
19 documents, communications back and forth with Media Net. I
20 believe there were statements that Media Net did send to
21 some of the publishers. Those have been produced actually
22 by both sides. So Miss Ranahan already has the information
23 I think that she's asking about.

24 THE COURT: All right. Look, with respect to Mr.
25 Levy, I think the resolution is as follows, is to allow the

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defendants to serve interrogatories concerning the
spreadsheets. Can you do that in 50 interrogatories?

MS. RANAHAN: Yes, Your Honor.

THE COURT: Okay.

MR. DICKSTEIN: I apologize, I didn't hear the
number, Judge.

THE COURT: Five zero. Fifty interrogatories
regarding the spreadsheets only.

MR. DICKSTEIN: Okay.

THE COURT: And I'm gonna direct defendant to
respond to those within 30 - plaintiff to respond within 30
days of getting them. Can you serve those within two weeks,
Miss Ranahan?

MS. RANAHAN: Yes.

THE COURT: Okay. All right, the next issue in
the correspondence relates to the purported attempt by
defendants to reserve the right to depose David Israelite,
Keith Richards, and David Burns, depending upon Judge Ramos'
rulings to defendants' objections to my ruling. I'm really
- Miss Ranahan, I'm really a little surprised that you
somehow construed that as not being subject to the fact
discovery cutoff.

MS. RANAHAN: Well, Your Honor, what we were
given was the right to issue the interrogatories, but there

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was no deadline imposed.

THE COURT: Well, isn't that fact discovery?

MS. RANAHAN: Fact discovery (indiscernible). We had an interrogatory, or, sorry, a request for admission deadline Friday. So that was 30 days later. We still have experts ongoing.

THE COURT: Wasn't the fact discovery cutoff March 31?

MS. RANAHAN: It was deposition cutoff was March 31. Long before that we appealed the rulings, or not appealed, but, you know, objected with Judge Ramos long before that. So it's not that we're trying to do something after. We've tried to raise it timely. All we're doing here is, in addition to the other depositions --

THE COURT: Why didn't you serve the written questions in February?

MS. RANAHAN: Well, there was no deadline. Our thinking was we'd prefer to have their depositions. There was no deadline in the order. We wanted to - we'd prefer to have depositions. That's the whole basis of our objections. So we didn't expect it to take this long, Your Honor. We thought we would know very quickly and then serve the 30, or the 25 interrogatories --

THE COURT: I'm just at a loss to understand how

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you couldn't, how you wouldn't think this was subject to the March 31 cutoff.

MS. RANAHAN: Well, there wasn't - the March 31 cutoff was fact depositions, not interrogatories Your Honor ordered --

THE COURT: Right, interrogatories were in lieu of the depositions you were seeking.

MS. RANAHAN: Right, but there was no order in the - we filed this before to get clarity on it. We're hoping to have some guidance from Judge Ramos. The point of us waiting, Your Honor, was that we, what we'd prefer to ask live rather than give the attorneys the preview of exactly, and the ability --

THE COURT: I mean the basis for you deposing these folks has not been a, has not been a mystery.

MS. RANAHAN: Right.

THE COURT: I mean the basis for depose - the reasons why you want to depose these folks is something that we've spoken about on numerous occasions. So I'm not sure that there's anything, you know, in terms of a confidential work product. I'm not sure there's anything left.

MS. RANAHAN: Well, it's just the fact of going for each of the 25 questions with an attorney before they give, you know, just provide a factual answer that we would

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2 prefer and our client would prefer, and we didn't have a
3 deadline, Your Honor, so we --

4 THE COURT: Well --

5 MS. RANAHAN: -- and we were --

6 THE COURT: -- you think you didn't have a
7 deadline. I'm not sure your conclusion there is right. But
8 go ahead.

9 MS. RANAHAN: Our understanding was the order
10 didn't set a deadline. Like I know Your Honor just
11 requested that we do these in two weeks. We didn't have
12 that, what we thought was the deadline that applied to
13 these. We filed this before the 31 cutoff, so that Your
14 Honor would see if. If you disagreed, we would've served
15 them by - and we had an answer --

16 THE COURT: This was in your March 29 letter.

17 MS. RANAHAN: Right.

18 THE COURT: So I'm not --

19 MS. RANAHAN: Right, and so we - right, and we
20 had made this position clear. We didn't know plaintiffs
21 were objecting until right before that. We had never
22 discussed the timing with plaintiffs. It wasn't until right
23 before this that they indicated that they would object if we
24 tried to do it later. But our - we explained the basis for
25 why we were waiting to do it. We didn't expect it to take

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2 this long. If anything we thought, you know, Judge Ramos
3 would have ruled far in advance of the March 31 deadline.
4 But we're happy to just take the, you know, two weeks from
5 today which Your Honor set and hope that Judge Ramos rules,
6 but the whole point was to try to get a ruling before we did
7 it so that it wouldn't be futile. If we did get to do the
8 depositions, we didn't then hand over the, what we would
9 still consider to be work product questions.

10 THE COURT: No, but I mean - well, all right.

11 MR. DICKSTEIN: Judge, if I --

12 THE COURT: Go ahead.

13 MR. DICKSTEIN: One point on that. I think that
14 Your Honor's order, and I apologize, I don't have it handy,
15 not in terms of the schedule which clearly had a March 31
16 fact deposition cutoff and then an April 28 interrogatory
17 deadline. So regardless of how you characterize it, one or
18 the other, the time has passed. But Your Honor's original
19 order I believe which allowed, permitted defendants to serve
20 25 questions spoke in terms of deposition by written
21 question. And to us it pretty clearly was a form of fact
22 deposition, which the deadline for that has passed.

23 THE COURT: One second, let me take a look at the
24 order.

25 (pause in proceeding)

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MR. DICKSTEIN: It might be docket 95, Your Honor.

THE COURT: That would be helpful, I mean --

MR. DICKSTEIN: February 16 order.

(pause in proceeding)

THE COURT: Okay. "Conference having been held in this matter on February 16, 2017, during which I heard oral argument concerning the motions of Keith Richards, David Burn, and David Israelite to quash subpoenas seeking deposition testimony, after hearing counsel, after hearing from counsel for all sides, for the reasons stated on the record in open court, it is hereby ordered that the non-parties' motion to quash the subpoenas for deposition testimony are granted, to the extent that any questioning of them shall be done by written questions and shall be limited to a total of 25 questions to be answered under oath or an affirmation pursuant to 28 U.S.C. 1746. Subpart (indiscernible) separate questions, the non-parties shall have 30 days to answer," should be or object to the questions. "Questions to which valid objections are made will count against the 25 question limit. This order is without prejudice to a further application to defendants to conduct oral examination of the non-party witnesses if the answers to the written questions demonstrate that discovery

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2 is appropriate, that such discovery is appropriate."

3 I mean I didn't use the term interrogatory, and I
4 thought this was, I think plaintiffs' construction is more
5 reasonable that this was interrogatory, a deposition by
6 written questions.

7 MS. RANAHAN: But, Your Honor, there's no
8 deadline in there, and we --

9 THE COURT: Well, there's the overarching fact
10 discovery deadline in the scheduling order.

11 MS. RANAHAN: What you ran through, I mean we
12 started doing - served on us 1,300 requests for admissions
13 on April 28. So by the time we got this order, we then
14 immediately, within the seven to fourteen-day deadline,
15 appealed it. We thought we'd get resolution on it. We've
16 just been granted leave to do more deposition, or, sorry,
17 more interrogatories for this other issue. I think given
18 that, I mean we read this order many, many times. I triple-
19 checked the docket to make sure there's no deadline listed
20 here. We certainly did not interpret it to be --

21 THE COURT: Well, no, but it related to a
22 discovery issue. So to think that this was somehow outside
23 of the scheduling order really doesn't seem reasonable. I
24 mean it was a discovery issue and it was an order with
25 respect to a discovery issue. So to think that this somehow

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was an exception to the scheduling order seems unreasonable.

MS. RANAHAN: Your Honor, we understood that your orders would trump the, you know, scheduling order just like the one today that you're giving --

THE COURT: I think I issued the scheduling order.

MS. RANAHAN: Right, right, but --

THE COURT: So --

MS. RANAHAN: Right, to the extent you're giving an order that doesn't, like the order today you're giving us leave to take the interrogatories after the fact discovery cutoff because these were issues pending long before - I mean these are not, this isn't an issue that we tried to raise after the cutoff. These were issues that we fought for months and months and months for. We then had to have third parties come in to, you know, to seek to quash it, and we immediately appealed it. So we've done everything we can to get these results in a more efficient, quicker way.

All we would request is that - we were hoping still to have Judge Ramos weigh in before we issued them, but we're willing to let that go if Your Honor will just give us the leave to do it within a certain, you know, the two weeks that you just gave us on the others or even sooner if you'd prefer. But we did not understand it to be --

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THE COURT: That's something I'm not quite sure -
you said you were willing to let something go. I mean --

MS. RANAHAN: Right, the hope that we could have
Judge Ramos decide in case we could get the depositions as
opposed to the questions. That's what the whole point, it
wasn't that we were just sitting on these. We were hoping -
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THE COURT: So, wait, wait, wait, wait. I'm not
understanding what you're saying. I'm trying to understand
you.

MS. RANAHAN: Yeah.

THE COURT: So you're saying, you weren't saying
you were withdrawing your objections to my ruling regarding
written questions. You were not saying that, is that
correct?

MS. RANAHAN: Right. We're withdrawing the
objections. We're, we want to either, we don't want to miss
our chance to do it at all. Our hope was that we would get
some clarity and get to take especially Mr. Israelite's
deposition before we gave the questions. But if we don't
get that, we would still like to have the opportunity to
take the interrogatories that you ordered. Those were the
subject of many motions and many hearings, and, you know, we
did not understand there to be a deadline on those, and

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2 that's why we, just to get clarity, we filed that before the
3 deadline in case we had a misunderstanding. But - oh, we
4 didn't know plaintiffs were gonna insist on there being a
5 deadline until just before we filed that letter. So that
6 was the reason we did it on March 29, but we did try to do
7 it before the cutoff in case there was an issue with that.

8 MR. DICKSTEIN: Your Honor, I think we've heard
9 Miss Ranahan acknowledge multiple times that these
10 questions, whether they're depositions or whether they're
11 interrogatories, there were deadlines for them in the case
12 management order that Your Honor signed.

13 MS. RANAHAN: I mean these are also third
14 parties.

15 THE COURT: No, let him finish.

16 MR. DICKSTEIN: Thank you.

17 THE COURT: Go ahead.

18 MR. DICKSTEIN: So, you know, if the defendants
19 wanted to preserve their rights, the thing to do was to
20 serve these written questions and then continue to pursue
21 their appeal to Judge Ramos. And if that gets overturned,
22 then maybe they'll get an opportunity for live testimony.
23 But, you know, I think they knew the deadlines were coming,
24 there's no doubt about that, and they chose not to pursue
25 it. You know, I think the opportunity's passed.

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2 You know, overarching point, there have been six
3 or seven party depositions thus far in the last month prior
4 to the deadline. We've had three or four third-party
5 depositions, you know, I think these issues have been very
6 well ventilated. Discovery has come to a close. The
7 deadline has already been extended at least twice I think.
8 The parties have worked very diligently to complete
9 discovery by that time period, and the period has now
10 passed.

11 MS. RANAHAN: Your Honor, that's the parties,
12 these are third parties that were, you know, represented all
13 by separate counsel, some were from out of state --

14 THE COURT: No, but why would you think - I mean,
15 Miss Ranahan, I'm a little perplexed here. I mean why would
16 you think that there was a different fact discovery cutoff
17 for non-parties?

18 MS. RANAHAN: Well, the cutoff --

19 THE COURT: That sounds irrational. I've never
20 seen a court set one discovery schedule for parties and a
21 separate discovery schedule for non-parties, and I've never
22 heard an attorney argue that the fact discovery cutoff
23 somehow only applied to parties but not non-party witnesses.

24 MS. RANAHAN: Your Honor, we didn't - the cutoff
25 of March 31 was fact depositions. It wasn't fact discovery.

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2 We still had requests for admission deadline a month later
3 which I understand to be fact discovery. So the idea that
4 all fact discovery had to be completed by March 31 was not
5 my understanding. They literally just served on us over
6 1,000 requests for admission that are gonna be due in 30
7 days. There's been absolutely no indication about how this
8 would prejudice them to have third parties respond to
9 interrogatories on the same timeframe as both parties have
10 just served requests for admissions. We now have these new
11 interrogatories. I mean we also had, you know, Your Honor
12 just decided a motion for leave to supplement where we
13 understood the deadline for leave to amend would have
14 applied, but Your Honor gave them the benefit of the doubt.

15 THE COURT: No, but that was with respect to a
16 deposition that was taken before the fact discovery
17 deadline. So that's what distinguishes the situation from
18 Mr. Levy and Spirit from Messrs. Israelite, Richards, and
19 Burn.

20 MS. RANAHAN: Well, we certainly moved to compel,
21 I mean we had, we tried to get those - Your Honor, we were
22 here before you in February trying to get those depositions.
23 And originally you were gonna give us two as a sampling and
24 then ultimately decided we could just get these questions.
25 What we have pending before Ramos is, assuming that is the

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order, we're gonna get the opportunity to at least ask those questions. If you're not taking that away on a, because you're --

THE COURT: Well, let me just interrupt you for one second and ask you a question. Is this issue ripe until a notice of deposition is served or until interrogatories are, until written questions are served to these three witnesses?

MR. DICKSTEIN: I think Your Honor may be right. Defendants have I think jumped the gun a bit perhaps and said they want to preserve their rights. Our view certainly is those rights have expired. The deadline's clearly for non-expert depositions in the order was March 31, and for any further interrogatories was April 28, and RFA is requests for admissions which, and the RFA's that we did serve were prior to the deadline.

THE COURT: Have you taken a position before Judge Ramos that the objections are now moot?

MR. DICKSTEIN: Is that question posed to plaintiffs --

THE COURT: To you, yeah.

MR. DICKSTEIN: -- or defendants?

THE COURT: To plaintiffs.

MR. DICKSTEIN: I think we'll consider it now.

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2 THE COURT: Well, you know, look, I am troubled
3 by defendants' construction here of the scheduling order and
4 the notion that somehow these written questions are outside
5 the March 31 deadline. But I think this issue may be
6 premature until the notice of deposition is served, and I
7 certainly don't want to do anything that might restrict
8 Judge Ramos' ruling on defendants' objections. As I said,
9 I'm troubled by the defendants' construction here, but I
10 think the issue may be premature until either written
11 questions or a notice of deposition is served on these three
12 individuals. So I think I'm not going to - I think the
13 issue is not ripe at this point.

14 ABKO, you know, the issue with respect to ABKO may
15 stand on the same footing. Until there's a notice of
16 deposition served, I'm not sure - I'm not sure what I'm
17 ruling on.

18 MR. DICKSTEIN: But, Judge, for that - I'm sorry.
19 For that one there was a notice --

20 THE COURT: There was a notice?

21 MR. DICKSTEIN: -- served on Mr. Klein
22 individually. They chose not to do a 30(b)(6).

23 MS. RANAHAN: Your Honor, the reason for that one
24 was that we were still waiting for Your Honor to decide
25 formally the settlement agreement issue that's been pending

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2 for several months. So, again, we've been trying to bring
3 these issues to the Court's attention to get them so that we
4 can either object --

5 THE COURT: Didn't I suggest to you in March that
6 you depose Mr. Klein because it didn't look good on your
7 getting the licensing agreements?

8 MS. RANAHAN: On the settlement agreement?

9 THE COURT: Settlement agreements, excuse me.

10 MS. RANAHAN: I don't know that you suggested
11 that we depose him, but our hope was, again, to get Judge
12 Ramos to look at that issue. We had three issues we wanted
13 to bring to Judge Ramos: the depositions, the redactions,
14 and the settlement agreement. We still - I understand Your
15 Honor now is gonna be ruling on that, but we've been waiting
16 for a ruling on that for several months. So that's the - we
17 had him scheduled, we'd prefer to take him with that
18 agreement unredacted, and I understand Your Honor's not
19 gonna open it up, but we would like to ask Judge Ramos to
20 look at it as well.

21 So the point of all of this was that we were
22 trying to get our objections resolved so that we could
23 something about them, if, in fact, they were resolved in
24 defendants' favor. If they're not, then we would return to
25 the status quo. But we filed these with plenty of time to

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2 ideally have them resolved. I understand the Court's
3 dockets are full, and these aren't, you know, at the top of
4 anyone's --

5 THE COURT: Well, I mean these issues were raised
6 in your March 29 letter. So --

7 MS. RANAHAN: That was just to preserve, and we
8 had objected to Ramos --

9 THE COURT: Assuming you had something to
10 preserve.

11 MS. RANAHAN: Right, I mean this was just to make
12 Your Honor aware that we were still waiting on those rulings
13 and that we had viewed those rulings to be --

14 THE COURT: No, you don't even wanna go ahead
15 with Mr. Klein at this time. You want to wait - you want to
16 object - you want to file objections to Judge Ramos
17 regarding the settlement agreement, regarding the redactions
18 to the Rolling Stones/ABKO settlement agreement, and wait
19 for Judge Ramos to rule on that before --

20 MS. RANAHAN: If we can get that.

21 THE COURT: Please let me finish the question
22 before you try to answer it. And wait for Judge Ramos to
23 rule on that before you seek Jody Klein's depositions, is
24 that --

25 MS. RANAHAN: Or we won't take it at all. We

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only want his deposition if we can ask him questions about that settlement agreement.

THE COURT: So if Judge Ramos affirms me with respect to the redactions, the issue of Klein's deposition goes away?

MS. RANAHAN: Yeah. Yes.

THE COURT: Well, then maybe this gets the same result right now as the Israelite, Richards, and Burn's depositions. Maybe there's no there there, or maybe there won't be any there there. All right.

All right. All right, the next issue in the correspondence is the date of the first downloads from the defendants' websites. There was prior representations from counsel that they were not available prior to 2012, but then there was testimony from Mr. Lundberg that says they were available. The dates of the first downloads prior to 2012. But then I thought the defendants subsequently said that they were producing that information. Is there still an information regarding pre-2012 downloads?

MR. DICKSTEIN: I believe they produced it.

THE COURT: Okay, so that's resolved. All right, the statements regarding additional recordings we've talked about. One of the other issues raised by plaintiffs in the April 7, in their April 7 letter is there was testimony from

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Lundberg that plaintiffs construed as suggesting that defendants had not done a thorough search for documents. Where do things stand on that?

MR. DICKSTEIN: Your Honor, my understanding is that after that testimony, after that came to light, they went back and they searched for any other recordings of the musical works that plaintiffs are suing on, and those have subsequently been included in updated spreadsheets, subject to one that I mentioned earlier which we're still working out with defendants. I don't think that's alive issue for Your Honor.

THE COURT: Okay. I think - and the other issues that are discussed in plaintiffs' April 7 letter I think we've already discussed. Levy and the redactions are the other issues discussed in plaintiffs' April 7 letter, which I think we've already discussed. Is anything else from plaintiffs' April 7 that we haven't already addressed that we should address?

MR. DICKSTEIN: I don't believe so, Your Honor.

THE COURT: Okay. So the next thing is defendants' April 14 letter. The 2012 downloads we've discussed. The redactions we've discussed. All right, let me ask Miss Ranahan, is there anything else in your April 14 letter that we haven't discussed that we should discuss?

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MS. RANAHAN: No, Your Honor.

THE COURT: Okay, and that takes us to April 28 and the May 1 response. What - I just saw plaintiffs' response to the April 28 letter this morning. Well, why don't I hear from defendant first with respect to Mr. Adabal (phonetic), and then let me hear from plaintiffs with respect to Mr. Adabal --

MR. DICKSTEIN: Abikbal (phonetic).

THE COURT: Abikbal. Why don't I hear from Miss Ranahan first --

MS. RANAHAN: Thank you, Your Honor.

THE COURT: -- with respect to Abikbal.

MS. RANAHAN: So we were given around February 22 a proposed day of March 6 --

THE COURT: Right.

MS. RANAHAN: -- that we originally thought would work --

THE COURT: That was for less than all the 30(b)(6) topics --

MS. RANAHAN: That --

THE COURT: -- half a dozen 30(b)(6) topics --

MS. RANAHAN: 9, that's when it was 9. So at that point, we thought that could work, and we were also scheduling a host of other depositions. We responded within

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2 five days saying actually that won't work. We're still
3 waiting --

4 THE COURT: When did you say it wouldn't work?

5 MS. RANAHAN: 28th of February, February 28. We
6 said could you give us an alternate date beyond March 6. We
7 would like one after the, I think, I believe it was the
8 March 10 mediation before Your Honor because we had a bunch
9 of depositions that were already scheduled and we wanted to
10 push that one until after mediation. Plaintiffs would not
11 give us a date.

12 At that point, we were back and forth about when
13 we could reschedule him. He said March 6 is the only day.
14 Then subsequent --

15 THE COURT: What was the problem with March 6?

16 MS. RANAHAN: We had a conflict. We had both of
17 our counsels were in trial that were gonna be in New York.
18 I couldn't do it. And we had another one scheduled, and we
19 wanted to move it to - also, there were substantive issues
20 too, Your Honor. We were waiting for some discovery
21 responses to be updated. They ended up revising a
22 spreadsheet on April 7 that related to his deposition. They
23 designated him for topics on March 16 and March 20 --

24 THE COURT: Let me stick with March 6 for a
25 minute.

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MS. RANAHAN: Okay.

THE COURT: And the problem with March 6 is you were on trial somewhere else?

MS. RANAHAN: Tom Lane and Michael Elkin were on trial in the Amazon case, and I wasn't able to make it. I had a - I was, Your Honor, I'd flown out here six times over the last couple of months, but that day I had another obligation and wasn't able to do March 6. I originally thought that Tom was free on that day, (indiscernible), but it turned out they were not.

In addition to that, we had substantive problems with it, and we wanted - we were hopeful there was a chance that we'd resolve this case.

THE COURT: There was nobody else from Winston & Strawn who could've done it?

MS. RANAHAN: No, Your Honor. It was actually our partner conference on top of it, it was our partner conference weekend. So we couldn't rep in someone else either.

THE COURT: No, but was the partner conference scheduled before February 28? I mean prior to February 28 you confirmed Abikbal for the 6th, right?

MS. RANAHAN: We did - for a very short time there was a day, and then we responded the next day never

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2 mind, we can't make it. And at the same time they were
3 changing dates too. We were all moving dates around. This
4 was not an isolated incident. They had moved dates, and we
5 cooperated. They took off Audrey Ashby the last minute,
6 moved her from February to April, or, sorry, February to
7 March before we had the extension of discovery into March,
8 and we agreed. And the same with (indiscernible), so this
9 was not a foreign practice for us to say actually that date
10 doesn't work. We're dealing with a lot of different dates
11 here. Let's move it to after this date.

12 But they resisted in giving us another date on
13 that one, on Abikbal, and then subsequently continued to
14 designate him for more and more topics but never gave us a
15 date. By the time they designated him for the final four on
16 March 20 or the final - it was March 16 to March 20 was five
17 more. We had depositions every single day, I mean scheduled
18 throughout the rest of March. So - I mean virtually every
19 single day. We had impacted schedule the last couple of
20 weeks of March. So as of March 20 we just never got another
21 date. I asked them for another date, Your Honor, to move it
22 after the mediation; we just never got a date.

23 So the suggestion that we just didn't ask for a
24 date is just wrong because we asked for another date, and we
25 asked for that on February 28. They just never gave it to

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2 us. And continued to designate him, and produced the
3 spreadsheet that relates to his testimony on April 7.

4 THE COURT: All right. Well, (indiscernible).

5 MR. DICKSTEIN: Sure. Your Honor, well, first of
6 all, this is the first I'm hearing of the defendants being
7 on trial in any time period around the March 6 date. In
8 fact, the reason that they stated in their letter why they
9 wanted to push off the March 6 date, which both sides had
10 agreed to. There are emails to that effect and the letter
11 that we submitted yesterday or handed up to Your Honor this
12 morning. The stated reason why they wanted to adjourn that
13 was an email that Miss Ranahan had sent on February 22 with
14 various discovery issues, mostly document issues, some
15 spreadsheets they couldn't access, some things they weren't
16 clear on. Many of those issues actually related to parties
17 other than the EMI plaintiffs for whom Mr. Abikbal is a
18 representative.

19 In any event, I responded to that February 22
20 email on March 1, so that's five days before Mr. Abikbal's
21 March 6 scheduled deposition. It shouldn't have impacted it
22 at all. And I'm also - Miss Ranahan may have more
23 familiarity with this than I do, but the trial, the Amazon
24 trial that she's mentioning I have some tangential awareness
25 of it, and I believe that actually started on March 8. So I

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2 don't know that that would've impacted anyone's ability to
3 depose Mr. Abikbal on March 6, certainly not Miss Ranahan
4 who was not a part of that other trial.

5 Miss Ranahan mentioned a spreadsheet that we
6 updated on April 7. That was a licensing spreadsheet which
7 Miss Ranahan then marked as an exhibit at the deposition of
8 Michael Riggs, another 30(b)(6) designee of the EMI
9 plaintiff. So she's had a full opportunity to question EMI
10 plaintiffs about that, and there were about ten pages
11 actually of deposition testimony that we attached to our
12 March 1 letter showing that.

13 You know, as far as the additional topics that she
14 indicates we designated Mr. Abikbal for, you know, those are
15 topics that we really asserted an objection to almost
16 entirely in response to the 30(b)(6) notice. These were
17 things like defendants, plaintiffs' knowledge of defendants'
18 willfulness, and how we would have knowledge of that I think
19 is unclear at best. There were other topics such as
20 disputes concerning plaintiffs' ownership --

21 THE COURT: Well, if you were objecting to the
22 topics, I mean why are you desig - it does seem sort of
23 sharp, to say the least, to be deposing a witness for topics
24 after you've already said it's too late to depose that
25 witness.

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MR. DICKSTEIN: Your Honor, that's a fair point. I think, as Miss Ranahan indicated, it was March 16 and March 20 that we indicated Mr. Abikbal would be the person to speak to certain issues, if there was anybody at the EMI plaintiffs. She didn't come back and say, well, let's depose him. When are we gonna do it? We've got ten days left, let's figure out a date. It wasn't - the email chain goes completely silent until April 14, two weeks after the deposition deadline when she raises this Friday evening email and says, oh, can we get dates for Mr. Abikbal.

THE COURT: Was there any - I'm looking at exhibit A to your May 1 letter. Exhibit 1 is an email chain, and the first email, I guess the most recent, is your March 2 email to Miss Ranahan, and there was no response to that March 2 letter concerning the Abikbal deposition?

MR. DICKSTEIN: I don't believe so, not until after the fact deposition cutoff. If I'm wrong, I'm sure Miss Ranahan will correct it, but I don't believe so.

THE COURT: You're objecting to all the other - well, let me rephrase that. There are a number of topics that you designated Abikbal for before March 6. With respect to the topics that were not designated before March 6, are you objecting to all of those topics?

MR. DICKSTEIN: We are, Your Honor, because he

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was designated for all topics for which --

THE COURT: No, no, I'm not saying objecting to the deposition. Are you objecting to all topics in the 30(b)(6) other than the topics for which Abikbal was designated prior to March 6?

MR. DICKSTEIN: We asserted objections to all of them. We did say that we would provide a witness --

THE COURT: Okay.

MR. DICKSTEIN: -- in response to those topics. As I've indicated in the correspondence, for most of those, there's really nothing for that witness to say. I mean, for example, disputes as to ownership of copyrights, we've informed defendants numerous times that we have no such information. We're just simply not aware of any. But, you know, we didn't want to just say, well, we object, you know, we'll say, look, here's a person who would know about that, but the fact is there's no information responsive.

MS. RANAHAN: Your Honor, the reason we asked them again about these topics is because we have been asking since January for witnesses for the topics they had not objected to. So these were topics that were not objected to in their objections. We didn't even ask for witnesses for the topics that they objected to. These are topics that they did not object to in their formal --

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THE COURT: Well, with respect to the topics for which they designated Abikbal after March 6, did you ever seek to take his deposition on those topics or any topics? Did you ever seek to take Abikbal after they designated him for these additional topics?

MS. RANAHAN: Well, we tried to take Abikbal - we were asking about him, you know, as of February 28, we wanted another date. They just never gave it to us. And then they continued to designated him suggesting to me they were not taking issue that we were eventually gonna take his deposition. I mean --

THE COURT: No, but after they designated him for these additional topics, did you call Mr. Dickstein or send an email to Mr. Dickstein saying we'd like to take Abikbal on such and such a date?

MS. RANAHAN: Well, we were actually seeing each other quite regularly, almost, you know --

THE COURT: Fair enough, did you ever ask him then --

MS. RANAHAN: -- every week for depositions.

THE COURT: -- when you saw him at another deposition or some other matter, did you ever ask him or raise with him the subject of scheduling the Abikbal --

MS. RANAHAN: Of Abikbal, I don't recall if we

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2 talked - I'm sure we may have, I just don't recall a
3 specific conversation. We had asked them for a date, they
4 said no. They then kept designating him --

5 THE COURT: When did you ask them, you said you
6 asked them for a date and they said no --

7 MS. RANAHAN: February - we asked them originally
8 February 28 for a date after March 10.

9 THE COURT: Did you ask them for a date after -
10 after you got this March 2 email from Mr. Dickstein, the
11 email that's exhibit A to his May 1 letter, did you raise
12 the schedule of the Abikbal deposition after you got that
13 March 2 email?

14 MS. RANAHAN: I did raise it with, obviously in
15 April, but I was not under the impression they were gonna be
16 resisting based on timing given that they had just
17 designated him, you know, in March 16 or March 20 for new
18 topics. So how would I think that they were then gonna say
19 but you can't take him because we're not giving you a date?
20 I mean this is - so their position is we gave you one date,
21 March 6. They designate him to topics they had not objected
22 to. So we're assuming we're cooperating here. I had no
23 idea, Your Honor, when I emailed him in April can we get the
24 day for Abikbal. We had already moved one witness to April.
25 That was due to plaintiffs wanting to take him in New York,

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2 and then there was a snowstorm, so we moved it to April
3 without - we cooperated. We originally wanted to take that
4 one in Nashville, and we wouldn't have had the issue with
5 the snowstorm.

6 But we didn't - because we were scheduling a
7 couple of things in April and things that had been talked
8 about and agreed to prior, I had no idea that they were
9 gonna take this position that there was no time to do this.
10 And we were in the meantime taking depositions all the way
11 throughout March. So by the time on March 20 they had
12 designated him, the calendars were impacted with all these
13 depositions, and there was gonna be no time. But we had
14 been trying for months, Your Honor, since January to get
15 these dates. I mean if you look at the correspondence I
16 attached to our April 28 letter, we had been trying since
17 January to get dates for these depositions of the 30(b)(6)
18 designees. We didn't know that he was gonna be - and it's
19 not just willful, Your Honor, it's --

20 THE COURT: Well, I'm trying to understand the
21 chronology here. After - I'm looking at your letter of
22 April 28, page 4 of your April 28 letter. I guess it's the
23 --

24 MS. RANAHAN: We took Mr. Riggs on April --

25 THE COURT: -- the third full paragraph on page

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4. "The parties have agreed to hold other depositions after the March 31 cutoff when they were rescheduled per plaintiffs' request including Mr. Riggs. When Mr. Dickstein informed me that Mr. Abikbal would be attending Mr. Riggs' April 20 deposition, I offered to take Mr. Abikbal's deposition the same day as Mr. Riggs," and you cite to an email. "The EMI plaintiffs refused," and you cite to another email.

Between - just one second.

(pause in proceeding)

THE COURT: There's an email that's attached as exhibit 11 to your April 28 letter. It's an email from you, Miss RanaHan, dated April 14 talking about scheduling Abikbal --

MS. RANAHAH: And this is before --

THE COURT: Is that - is that - and you say you raised Abikbal orally with Mr. Dickstein after the March 2 email?

MS. RANAHAH: I believe so, Your Honor, but I don't have a specific conversation in mind. When I sent this email, Your Honor, exhibit 11, this was before Riggs, Mr. Riggs proceeded. So at this point I'm not thinking we're way too weeks deep outside of the territory where we could possibly something that they've just designated on. I

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2 actually was gonna be in New York these days already, on the
3 24th, I was gonna be in New York for Mr. Riggs' deposition.
4 I asked them if they could do it tomorrow or yesterday since
5 we're here again, but Mr., I believe Mr. Abikbal was not
6 available. He was supposed to come to be counsel for Mr.
7 Riggs, but then when I suggested we could take his, they
8 didn't end up having him show up in case we tried to ambush
9 him or something. We wouldn't have done that.

10 So the question of whether this is like prejudice
11 or it's impacting the litigation, I mean this was a witness
12 that we've been trying to get a date for since January.
13 Yes, they offered one date, March 6, it wasn't gonna work
14 for various reasons, including substance, which we were
15 still - even Mr. Dickstein admits I sent an email on
16 February 22 about these discovery issues, and he responded
17 on March 1 which was five days before the March 6 date. So
18 at that point, we don't believe that the March 1 resolved
19 those issues. We still have many issues flowing from that,
20 including the spreadsheet update we got on April 7.

21 So there were updates that kept coming in after -
22 including also they dropped one of their songs. Ziggy
23 Marley Tomorrow people, they dropped one of the songs which
24 would impact the scope of the deposition. So things were
25 happening long after March 6, Your Honor, that makes the

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2 notion that we were stuck with March 6 forever just unfair
3 to me, especially in light of their designations. And the
4 topics, if you look at page 3 and 4, sorry, page 3 of my
5 letter, lists - it's not just about willfulness, Your Honor.
6 There's four other topics there that they designated him
7 for, and if they were - they could've said we would have, I
8 mean if they were serious about objecting on timeliness,
9 they could've said we would have designated Mr. Abikbal for
10 these topics, but your opportunity to take him has passed.
11 They didn't say that, Your Honor. They said to me, oh,
12 he'll be the one that can speak to that, he'll be the one,
13 and then they just refused to give me a date, and I'm
14 supposed to - and that's our fault?

15 MR. DICKSTEIN: Judge, those emails are sent I
16 believe March 15 and March 20 was the most recent one. At
17 no time between that time and the expiration of the fact
18 discovery deadline did defendants make any attempt to
19 schedule, reschedule a deposition of Mr. Abikbal, after we
20 made it abundantly clear, as Your Honor saw in my March 2
21 email to Miss Ranahan, that March 2 was the day. We
22 couldn't agree to go beyond that. We were very clear that -
23 -

24 THE COURT: Well, it's bizarre, but it is bizarre
25 though that then you're designating him for additional

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2 topics after that.

3 MR. DICKSTEIN: And, Your Honor, if defendants
4 thought --

5 THE COURT: That's really kind of an odd thing to
6 do. I mean if you're taking the position that March 6 was
7 the drop-dead date and he's designated for topics, you know,
8 1 through 9, then after the drop-dead date you're
9 designating him for additional topics --

10 MR. DICKSTEIN: No, Your Honor, understood, but
11 the drop-dead date that I'm referring to is March 31, the
12 deadline for fact depositions. So fair enough, if we had
13 written to Miss, if I had written to Miss Ranahan and said,
14 oh, you know, for these additional topics we don't really
15 think anyone at EMI is gonna know anything, but if it is
16 gonna be somebody, it's gonna be Mr. Abikbal, and she came
17 back and said, okay, when can we depose him, that's not what
18 happened here.

19 THE COURT: Didn't she ask you for dates after
20 March 10?

21 MR. DICKSTEIN: No, Your Honor, until April 14,
22 that email came in.

23 THE COURT: There were no face - when you were at
24 depositions or at other proceedings, she never --

25 MS. RANAHAN: I mean I --

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THE COURT: My question's to Mr. Dickstein.

MS. RANAHAN: Sorry.

THE COURT: Did she ever raise with you, not in writing but orally, deposing Mr. Abikbal after March - did she ever raise that with you after March 10?

MR. DICKSTEIN: I have no recollection of that happening.

MS. RANAHAN: I had seen all three of them --

THE COURT: Well, let me - one second.

MS. RANAHAN: Sorry.

THE COURT: And why is Mr. Abikbal on a different footing than Mr. Riggs? It sounds like Riggs was deposed after March 31.

MR. DICKSTEIN: The reason, Your Honor, was a snowstorm. Mr. Riggs had been scheduled for the middle of March and we had an unexpected snowstorm. He had to fly in from Nashville. Of course, if the deposition was in Nashville, then we wouldn't have been able to fly into New York, either way. So we said, you know, we said, look, we'll - because of this unforeseen event that's impacting our schedule, we'll agree to offer him after the deadline.

And that was the only witness for whom we agreed to do that, you know, we've been very clear I think all along that we view discovery is winding down here, fact

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2 discovery is ending, and we want to move on.

3 MS. RANAHAN: It's winding down, Your Honor, but
4 we tried to schedule it - and it's winding down, but we
5 tried to schedule it the same week as Riggs. We tried to
6 schedule it all of April. I definitely - I was in the room
7 with all three of them at different times over March with
8 three different depositions, and we were constantly having
9 scheduling discussions. So the notion that they designate
10 him and then don't offer, I mean why wouldn't they say
11 here's our witness and offer us a date. Of course, we want
12 to take it because we're asking specifically for the
13 30(b)(6) designee for these topics. Of course, we want to
14 take the deposition for these topics. We wouldn't have been
15 pressing them.

16 But the real thing is that we were delayed in
17 getting anyone designated on these topics until late March
18 even though we'd been asking since January. So --

19 THE COURT: I'm looking at your - again, I'm
20 looking at your April 28 letter, and Abikbal was designated
21 for some topics and Riggs for the other topics?

22 MR. DICKSTEIN: Correct, Your Honor, and also a
23 third EMI representative defendants deposed.

24 THE COURT: All right.

25 MS. RANAHAN: And, Your Honor, we've asked if

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2 there's any - what is prejudice in just proceeding with this
3 one deposition that, you know, they were designating topics
4 on through March 20, and we haven't heard anything. I mean
5 I understand we all want to move on and get past discovery,
6 but there are these issues that were raised before the
7 cutoff, long before the cutoff, and the fact that they
8 weren't completely resolved I don't think that's a fair
9 reason to prevent us from taking this. We've been prevented
10 from taking many of the depositions we had hoped to take,
11 and we were continually told you'll take the 30(b)(6)'s,
12 you'll take the 30(b)(6)'s. Now the main EMI 30(b)(6)
13 witness we're being told, you know, by plaintiffs that we
14 can't even take his, and that is nothing that we thought we
15 were gonna be doing, especially given that we were - when
16 they wanted to reschedule one on unilateral grounds, and I
17 understand there was a snowstorm, but there was also Audrey
18 Ashby who they, I don't know why they rescheduled it, but
19 they, at the end of February, when we still had a February
20 cutoff, said we have to move Audrey to March.

21 THE COURT: March 31 cutoff.

22 MS. RANAHAN: At the time it was February. We
23 moved it back a month. At the time they unilaterally moved
24 Audrey Ashby to March for I have no idea what the reason is
25 and I never asked. We just cooperated and rescheduled it.

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But they said we're gonna have to move Audrey to March. We didn't kick up a fuss. I thought we were all being cooperative with these depositions that we had agreed to. That had been when they had wanted to move something or had a scheduling issue, we cooperated.

This was the one deposition that we tried to move, and they resisted giving us a date even though I asked them for an alternate date to March 6 on February 28, and they never gave me a date, and yet continued to lead me down the road thinking, of course, they're gonna give me a date, they're designating him for things on March 16 and March 20. How could they then come back and say too late even when we were spilling into April on isolated ones that we had tried to get done earlier but couldn't? And that's - I mean this is - we didn't even - originally we came in trying to take all, you know, the August depositions and Israelite and third parties; we didn't get to take any of those. Now we're just trying to take the three 30(b)(6)'s.

THE COURT: No, but I'm not sure that the artists' depositions bear on this at all, I mean --

MS. RANAHAN: Right, Your Honor, but the representative was you'll take the 30(b)(6) --

THE COURT: You can ask - please don't speak over me.

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MS. RANAHAN: Sorry, Your Honor.

THE COURT: You know, some of those, I really think some of those applications were not well grounded, and the fact that you don't get depositions to which you're not entitled to doesn't really bear on whether or not you're entitled to Abikbal.

MR. DICKSTEIN: Judge, if I might, two reasons why, I don't know that this deadline should come as a surprise. One is the order. I mean Miss Ranahan is suggesting that we somehow led her to believe that there would be depositions after the fact deposition cutoff. Well, I mean your order is an order, and that means something.

THE COURT: I understand that, but --

MR. DICKSTEIN: And it's interesting to note that they sought, before the expiration of the March 31 deadline, they sought leave or they - you're suggesting they're reserving their rights to depose these artists and Mr. Israelite. There was no mention of Mr. Abikbal in that application.

MS. RANAHAN: Your Honor --

THE COURT: One second. Let me just see something here, hold on one second.

(pause in proceeding)

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THE COURT: How many depositions were taken after March 31?

MR. DICKSTEIN: One. Mr. Riggs, because of the snowstorm.

THE COURT: Is that your understanding, Miss Ranahan?

MS. RANAHAN: One was taken after, but there was --

THE COURT: That's all I'm asking is how many were taken after March 31. Just one. Right?

MS. RANAHAN: One was taken, yes.

THE COURT: All right.

MS. RANAHAN: But, Your Honor, if I could, I will say that we agreed to let them move Ashby into March before we got an official March extension at their request. So that's what we understood --

THE COURT: All right. Well --

MS. RANAHAN: -- the scheduling of these would be. And I would understand, Your Honor, if we just came for the first time to them after April and tried to get this deposition, but we've been trying since January. We've been trying, they didn't give us --

THE COURT: Well, after - I mean, look, after they sent you the March 16 email designating Abikbal for

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2 additional topics, it looks like, at least from the
3 documentary record, the last time, the next time you raised
4 the Abikbal deposition was April 14, almost a month later.

5 MS. RANAHAN: Well, they also designated him for
6 four more topics on March 20. I had no idea this was gonna
7 be an issue.

8 THE COURT: Wait, four more topics on March 20?

9 MS. RANAHAN: Yes. Or it may have been four and
10 then one but the final topic --

11 THE COURT: Hold on, hold on --

12 MS. RANAHAN: -- they designated --

13 THE COURT: -- hold on, hold on, hold on. Well,
14 even so, that's three and a half weeks later. Even looking
15 at the March 20 date, okay, I see the March 20 day for Mr.
16 Dickstein to you where he offers Abikbal for some additional
17 topics --

18 MS. RANAHAN: And then --

19 THE COURT: -- then it's three and a half weeks
20 before you raise the scheduling of his depositions.

21 MS. RANAHAN: We had seen each other in person
22 throughout that period, Your Honor, probably five to six
23 times. We had three depositions the next week, we then had
24 - and we were discussing scheduling generally, so we had
25 Lundberg's deposition, we have plaintiffs' deposition, we

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2 had --

3 THE COURT: No, but it's three and a half weeks
4 until you raise Abikbal.

5 MS. RANAHAN: Right, but before Riggs went
6 because I was trying to coordinate him around Riggs. I
7 figured we could - because we had Riggs scheduled in late
8 April, I figured we could move him around there.

9 THE COURT: Well, you know, I appreciate that in
10 some cases the parties have almost a course of dealing to
11 take depositions after the deadline, and most judges, if the
12 parties are okay with taking the deposition after the
13 deadline, the judge is not going to interfere with the
14 parties' agreement. But it doesn't seem like that's the
15 case here. It seems like there was only one deposition that
16 was taken after March 31. So I'm not - it doesn't seem to
17 me that there was a basis that defendants had for assuming
18 that Abikbal would be dealt with like a number of other
19 depositions because there was only one that post-dated the
20 March 31 deposition cutoff.

21 It looks like Abikbal was most recently designated
22 as a 30(b)(6) witness on March 20, and it wasn't until about
23 three and a half weeks later that defendants raised any
24 issue concerning the Abikbal deposition.

25 MS. RANAHAN: Well, in the emails, Your Honor --

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2 THE COURT: Please, please. It seems to me that
3 the effort to - the application to take Abikbal's deposition
4 here comes too late. There should've been a request to set
5 up a date between March 20, when he was most, when he was
6 finally designated as a 30(b)(6) witness on certain topics,
7 and the end of the discovery cutoff. It doesn't seem like
8 there's any documentary evidence that there were requests
9 prior to April 14. So I conclude that the application to
10 take the Abikbal deposition is denied.

11 All right. And the last issue raised in the April
12 28 letter is defendants' contention that 30(b)(6) witnesses
13 produced on behalf of Spirit, Warner, and EMI were not
14 properly prepared to discuss royalties paid to those
15 entities. Why don't I hear from Miss Ranahan first? Then
16 I'll hear from plaintiffs on that issue.

17 MS. RANAHAN: Well, we did touch on this earlier,
18 Your Honor. We just - none of them knew - well, now I won't
19 ever take Abikbal, but as far as - so I don't know from EMI
20 if they knew. But as far as the Warner and Spirit
21 plaintiffs, when we asked them about whether defendants had
22 paid them any monies, they didn't know, and they hadn't
23 investigated it, and they weren't able to testify about it.
24 And this is obviously a critical issue to this case to know
25 what amounts of licensing monies they've collected from the

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2 very uses that they're complaining about.

3 THE COURT: Well, isn't that information that's
4 best gonna come from the defendants themselves?

5 MS. RANAHAN: Again, Your Honor, we pay it to a
6 third-party service, so we're trying to get an understanding
7 of what plaintiffs knew they were paid when they filed this
8 lawsuit, what plaintiffs have been paid, what uses they've
9 actually cashed in on.

10 THE COURT: Wouldn't the third party then be the
11 best source as to what was paid to the plaintiffs?

12 MS. RANAHAN: We've got all we can from them, but
13 to the extent that plaintiffs have that information, which
14 they do, because the witnesses that we were able to take --

15 THE COURT: The third party here is Media Net?

16 MS. RANAHAN: In some cases, yes, but there's
17 other third parties.

18 THE COURT: Who are the third parties, Media Net
19 and who else?

20 MS. RANAHAN: Media Net, there was a prior
21 company called Rights Flow. There are a bunch of other --

22 THE COURT: Rights Flow?

23 MS. RANAHAN: Yeah, Rights Flow. That was from
24 an earlier era. Now it's the current one is Media Net.
25 There are other royalty companies. The whole thing, paying

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2 everyone from, you know, all the different - there's a bunch
3 of different third-party societies that pay these things.
4 So plaintiffs have in their records who they've gotten
5 payments from and whose behalf. We just don't have that.
6 And they have - the two witnesses I was able to take said
7 there's someone in their companies that would be more
8 appropriate to ask them about. They just don't know.

9 THE COURT: I'm sorry, say that again. I just
10 didn't hear the beginning of what you said.

11 MS. RANAHAN: There are witnesses that I was able
12 to question said that they did have people that would know
13 what defendants' payments were. It just wasn't them.

14 THE COURT: All right --

15 MR. DICKSTEIN: Judge - sorry.

16 THE COURT: Go ahead.

17 MR. DICKSTEIN: Judge, I think part of the reason
18 that that's the case is that defendants' 30(b)(6) notices
19 said nothing specifically about payments from defendants.
20 There was a topic that spoke about royalties or revenues
21 that you received, and we understood that to relate to the
22 spreadsheets that we produced which do indicate, you know,
23 all the income that has been received for these various
24 songs.

25 THE COURT: Do we have the 30(b)(6) notice?

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Yeah, this is exhibit E to your May 1 letter.

MR. DICKSTEIN: Right, let me see if that includes it. Yep, it's number 11, you're right, Your Honor.

THE COURT: One sec.

(pause in proceeding)

THE COURT: Okay, Miss Ranahan, when you asked the witnesses about what they - what was the question that you asked the witness that they couldn't answer?

MS. RANAHAN: How much money have defendants paid you for the uses that you're complaining about in this case? They didn't know. But people within their organization knew. They hadn't looked into it.

THE COURT: Did they know in the aggregate how much they'd received --

MS. RANAHAN: No.

THE COURT: -- for the musical works?

MS. RANAHAN: In the aggregate? They knew for the --

THE COURT: Really you should wait till the judge finishes asking the question before you try to answer it.

MS. RANAHAN: Sorry, Your Honor.

THE COURT: Did they know in the aggregate how much was paid in royalties for the musical works?

MS. RANAHAN: Did they know in the aggregate for

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2 each --

3 THE COURT: In other words, without knowing how
4 much each licensee paid, did they know how much in total
5 they received for the musical works?

6 MS. RANAHAN: They had the spreadsheets which
7 purport to have that information.

8 THE COURT: Right.

9 MS. RANAHAN: But - so, yeah, to the extent they
10 relied on the spreadsheets, yes. But we don't know how much
11 or what portion of that was defendants or how many of the
12 uses that are at issue in this case have been paid for by
13 our clients from their perspective.

14 THE COURT: Is there a 30(b)(6) topic that's
15 segregated out how much each, how much your clients paid?

16 MS. RANAHAN: Well, Your Honor --

17 THE COURT: I'm looking at number 11, and number
18 11 asks for a witness "on the subject of all facts within
19 your knowledge, possession, custody, or control or to which
20 you reasonably have access concerning all monies received by
21 you in relation to the music works, including, but not
22 limited to, all royalties or similar payments."

23 MS. RANAHAN: Right, so the musical works,
24 meaning the ones at issue in this case --

25 THE COURT: Yeah.

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MS. RANAHAN: -- and, of course, the defendants' payments would be relevant to this. The fact that they're gonna read it broader to re-out (phonetic) their obligation to obtain the most relevant evidence for this case --

THE COURT: Well, it's not a question of their revisiting the topic to get the evidence most relevant. It's a question of their preparing a witness with respect to the topic that you've identified. And your topic doesn't ask, you know, your topic asks in the aggregate, asks for how much they've received in royalties or similar payments in the aggregate and isn't seeking how much the defendants paid.

MS. RANAHAN: Well, the other aspect of our request, Your Honor, if you believe this topic shouldn't require them to get up to speed on that, is just the documents that reflect that. We have one document or very limited documents but not a comprehensive set of documents to show what they've actually received from us. And so we just believe that there's - it doesn't seem that the witnesses too much interest in it. They hadn't bothered to check, I mean this is a significant issue to us because we've been paying, Your Honor, for --

THE COURT: I understand --

MS. RANAHAN: -- well beyond three years.

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2 THE COURT: -- it's a significant issue, but, you
3 know, their obligation under Rule 30(b)(6) is to prepare a
4 witness with respect to the topics you've identified. I
5 understand what you're saying, but it would've been very -
6 let me put it this way, why didn't defendants, if you were
7 interested in a 30(b)(6) on how much the plaintiff received
8 from the defendants, why didn't you make that a 30(b)(6)
9 topic?

10 MS. RANAHAN: Well, we believed that 11 would
11 cover it, Your Honor, but I understand that that's not how -
12 -

13 THE COURT: Well, I mean 11 is not - it's
14 certainly not asking for the constituent parts of the
15 royalties or payments received, and certainly not asking for
16 how much defendants paid.

17 MS. RANAHAN: We believe that to be encompassed
18 by the question, and it's not asking for an aggregate
19 either. We're asking for all monies --

20 THE COURT: Yeah.

21 MS. RANAHAN: -- for the musical works defined as
22 the ones in this case.

23 THE COURT: Yeah, all monies from whatever
24 source.

25 MS. RANAHAN: Well, Your Honor, there's the

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2 question of the documents as well because we did request
3 documents requesting this.

4 MR. DICKSTEIN: Judge --

5 THE COURT: I'm sorry, where's - documents are
6 reflected where? I'm not sure - is there a document request
7 now that you're raising?

8 MS. RANAHAN: Well, we believe that we should at
9 least be able to see the documents reflecting the payments
10 that they know we've made to them regarding the very same
11 uses that they're suing on.

12 THE COURT: Well, is there a document request to
13 which you're - you're saying that their response to the
14 document request was inadequate?

15 MS. RANAHAN: We haven't - all we've been given
16 is one sheet that doesn't show any --

17 THE COURT: Well, you - yeah, you've raised this
18 though as a 30(b)(6) issue.

19 MS. RANAHAN: No, actually, Your Honor, if you
20 look at page 5 of our April 20 letter, request 42 --

21 THE COURT: Where, stand by. Page 5. "Moreover,
22 the information plaintiffs have produced does not reflect
23 which payments and revenues came from the defendants, even
24 though defendants have requested such information, and
25 plaintiffs agreed to produce responsive documents." Right?

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And I think there's a response to that in Mr. Dickstein's letter of today. Yeah, Mr. Dickstein's letter. I saw Mr. Dickstein's letter for the first time this morning, so I'm not as up on it as I'm on some of the other letters.

Page 3 of Mr. Dickstein's letter, the last paragraph. "In any event, more than a year ago plaintiffs did produce numerous statements of accounts sent to them on defendants' behalf that purport to show modest payments made by defendants." And they cite exhibit G. "Once again, in the more than 12 months since those documents were produced, plaintiffs have not raised any issue as to the sufficiency of that production." Is exhibit G the totality of the documents showing payments on behalf of the defendants?

MR. DICKSTEIN: No, absolutely not, Your Honor.

THE COURT: It's a sample.

MR. DICKSTEIN: It's a sample, Your Honor, that's correct.

THE COURT: Okay.

MR. DICKSTEIN: And actually, in preparing for this conference, I noted that Miss Ranahan uses an exhibit, a similar statement of account in her questioning of Mr. Levy I believe. So defendants are aware of these documents.

THE COURT: I mean, you know, with respect to the 30(b)(6) issue, it really seems like that's, you're seeking

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2 a level of specificity which could not reasonably be
3 inferred from the topic as drafted. I mean topic 11 is
4 drafted very broadly, and to ask for the constituent part of
5 how much the defendants paid I don't think that topic is
6 fairly identified within topic 11. And it would've been
7 very easy to draft a topic specifically identifying how much
8 the defendants paid, or how much the plaintiffs received in
9 royalty payments on behalf of the defendants.

10 So I don't think that element, that constituent
11 part, how much the defendants paid is fairly encompassed
12 within topic 11. So to the extent there's a 30(b)(6) issue,
13 I think the - the application to compel plaintiffs, or to
14 compel Spirit, Warner, and EMI to produce a 30(b)(6) witness
15 with respect to the royalties paid on behalf of the
16 defendants is denied.

17 MS. RANAHAN: Okay, Your Honor, then we would
18 just request that plaintiffs take another look at request 42
19 and make sure that they've produced everything that they
20 have responsive to that request because --

21 THE COURT: Is there reason to believe that they
22 haven't?

23 MS. RANAHAN: Well, it's - yes, because what we
24 have is a lot, far greater than what they produced as far as
25 the payment we've made to them over the last five years. So

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2 yes. But those, again, are payment we pay to a third party,
3 so we're trying to understand what they knew that they've
4 been paid, and it doesn't seem comprehensive. It seems,
5 like plaintiffs said, a very modest amount. While there are
6 modest amounts that are owed under the statutory schemes and
7 the amounts, it's not modest by any means what we've
8 actually paid to defendants, or sorry, paid to plaintiffs
9 over the years going back even before the three-year statute
10 of limitations.

11 So, yes, we have reason to believe that what
12 they've produced is a small sampling but not a comprehensive
13 search. And, again, Your Honor, every time they're asked us
14 to look for something or research for something, we have
15 done it. We have done it so many different (indiscernible)
16 searches, and --

17 THE COURT: Maybe what you're raising is an
18 honest - is there any objection to double-checking to make
19 sure that you've produced all documents responsive to number
20 42, I think it is?

21 MR. DICKSTEIN: Yeah, well, Judge, if you look at
22 the language of 42, which is on page 5 of Miss Ranahan's
23 April 28 letter, it's the same language as the 30(b)(6),
24 "all documents concerning all monies received by you."

25 MS. RANAHAN: And no, it says --

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MR. DICKSTEIN: Can I finish?

MS. RANAHAN: -- at issue in this action. Okay,
I'm just --

THE COURT: Okay, hold on one second. Page 5 of
her letter?

MR. DICKSTEIN: Yeah. It doesn't ask for a
breakdown for monies received by defendants is my point.

MS. RANAHAN: What it does is at issue.

THE COURT: Whoa, whoa, whoa, hold on, hold on,
hold.

(pause in proceeding)

THE COURT: Well, yeah, but I mean if you've
already - are you now reconstruing it?

MR. DICKSTEIN: No, Your Honor, and --

THE COURT: I mean if the meaning in that
document, if exhibit G to your letter were responsive to 42,
which is the position you've taken.

MR. DICKSTEIN: Actually, Your Honor, our
position would be they're responsive to other requests for
documents concerning defendants, communications concerning
defendants. So where, you know --

THE COURT: Whoa, whoa, hold on, hold on, hold
on, hold on, hold on.

(pause in proceeding)

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THE COURT: The document I'm looking at, your page 3 of your May 1 letter, Mr. Dickstein.

MR. DICKSTEIN: Uh huh.

THE COURT: The document request cited in defendants' April 28 letter at page 5 similarly sought, quote, "all documents concerning all monies received by you in relation to the musical compositions and/or sound recordings at issue in this action but did not specifically seek documents concerning payments that defendants made to plaintiffs," and then you have a cite to Rule 34. Indeed, plaintiffs objected to that request back in November 2015 and agreed to produce documents sufficient to show the revenue they have received from exploiting the musical works at issue in this action, which documents plaintiffs produced more than a year ago. At no time during the 18 months since plaintiffs served their discovery requests or during a lengthy fact discovery period in this action did defendants raise an issue as to the discovery response. Moreover, it is unclear why defendants seek information from plaintiffs concerning payments that were allegedly made by defendants when that information is presumably already in defendants' possession.

In any event, more than a year ago plaintiffs did produce numerous statements of account sent to them on

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2 defendants' behalf that purport to show modest payments made
3 by defendants. Once again, in the more than 12 months since
4 those documents were produced, defendants have not raised
5 any issue as to the sufficiency of that production nor did
6 defendants question any of plaintiffs' witnesses about the
7 statements that plaintiffs produced which further undermines
8 defendants' claim that they need additional depositions on
9 that issue.

10 MR. DICKSTEIN: So as I indicated --

11 THE COURT: Well --

12 MR. DICKSTEIN: -- a moment ago, Miss Ranahan did
13 question one of the plaintiffs' witnesses about those.

14 THE COURT: Well --

15 MS. RANAHAN: And I would've questioned him --

16 THE COURT: Hold on, hold on. I mean, look, the
17 production of documents should be complete, it should go
18 without saying. I mean is there an objection to double-
19 checking to make sure that the payments made on behalf of
20 the defendants, the document production concerning payments
21 made on behalf of the defendants is complete?

22 MR. DICKSTEIN: No, Your Honor, we'll look at
23 that.

24 THE COURT: Okay. All right. I think those are
25 all the issues in the correspondence. Have I overlooked

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anything from plaintiffs' point of view?

MR. DICKSTEIN: I'm sorry, just one second, Your Honor.

THE COURT: Yeah.

MR. DICKSTEIN: No, Your Honor.

THE COURT: Okay. Miss Ranahan, have I overlooked anything from your point of view?

MS. RANAHAN: No, Your Honor, could we just get a deadline for that last item?

THE COURT: Can you do that in two weeks?

MR. DICKSTEIN: Frankly, I don't know that, Your Honor.

THE COURT: Three weeks?

MR. DICKSTEIN: I could get back to Miss Ranahan if that's not gonna be possible. I just need to communicate with the clients, you know, there's six different groups of music publishers. They store documents in different ways.

THE COURT: All right, well, let's tentatively set it for May 22 which would be, I think that's two weeks, three weeks from today. May 23, excuse me, May 23. All right, I mean presumably, or hopefully the response is gonna be there's nothing else.

MR. DICKSTEIN: That may be the case, Your Honor.

THE COURT: So, you know, it's not - I don't

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2 think it's gonna lead to additional issues hopefully. Okay,
3 so May 23. If there's a problem with that, if you can't
4 work it out with Miss Ranahan, let me know. Okay? All
5 right. Anything else from either side?

6 MR. DICKSTEIN: No, Your Honor.

7 THE COURT: Okay, thank you all.

8 MR. DICKSTEIN: Thank you, Your Honor.

9 THE COURT: Is there a - what's the dispositive
10 motion deadline?

11 MR. DICKSTEIN: I believe by default it's 30 days
12 after the close of all fact discovery, so the end of June.

13 THE COURT: Okay. All right. Okay, thank you
14 all very much.

15 (Whereupon the matter is adjourned.)
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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, ABKCO MUSIC, et al. v. SAGAN, et al., 15cv4025, was prepared using digital electronic transcription equipment and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Date: May 4, 2017